Original

1906-07

FILE No. LEGIS. 19 OF 1906-07.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

JUDICIAL AND LEGISLATIVE (LEGISLATION)

"A" Collection, Serial Nos. 1—5

SEPTEMBER 1910.

Treasure-Trove Regulation.

TABLE OF CONTENTS.

Serial No. of File.	Number and date of letter and contents.	Reference.	Page in Part A.
1	No. J. 2709, dated 6th March 1907, to the Compiler, *Mysore Gazette.* Requests him to publish the draft Regulation in the Gazette.		1—6
2	No. Pol. 831, dated 30th March 1910, to the First Assistant to the Hon'ble the British Resident in Mysore. Forwards the Bill with some observations and requests him to obtain the sanction of the Government of India for its being passed into law.		6—12
3	No. 2650, dated 29th April 1910, from the First Assistant to the Hon'ble the British Resident in Mysore. States that there is no objection for the Bill being passed into law and requests that 9 copies of the Regulation as passed into law might be forwarded for information.		12
4	No. J. 823, dated 14th September 1910, to the Compiler, *Mysore Gazette.* Orders the publication of the Bill as Regulation III of 1910.		12
5	No. Pol. 296, dated 27th September 1910, to the First Assistant to the Hon'ble the British Resident in Mysore. Forwards 10 copies of the Regulation and requests that one copy might be sent to H. H the Nizam's Government as usual.		13

PREVIOUS REFERENCES.

1. Old File *re* Treasure-Trove Regulation.
2. General File 81 of 1892.
3. J. File 278 of 1892.
4. General File 302 of 1892.
5. G. O. No. 18049—Mis. 2828, dated 23rd June 1903.
6. G. M. 349 of 394 of 1904-05.
7. G. M. 71 of 1906-07 (Sls. 1-3 & 4-7.)
8. Legis. 16 of 1905-06 (Sls. 6, 8, 14 & 15.)

1906-07.

GENERAL AND REVENUE SECRETARIAT
JUDICIAL AND LEGISLATIVE (LEGISLATION)
SEPTEMBER 1910.

NOTES.

File No. 19 of 1906-07.

Draft Treasure-Trove Regulation.

Assistant Secretary Mr. Ramaswamy Iyengar's remarks on the application of Mr. Lawrence, Advocate, Bangalore, for a copy of the Rules in force in Mysore regarding Treasure-Troves :—

Legis. F. No. 16 of 05-06 (Sls. 6—8, 14 and 15).

"The rules of 1867 are declared to have not the force of law and to have become quite "unworkable. To reprint them in the Gazette would lead to an erroneous impression that "they have the force of law. The file may be submitted to the First Councillor for informa- "tion and further orders. It seems * to me that the Draft Regulation in the file may be "published in the Gazette with a statement of objects and reasons and taken up for con- "sideration in due course."

B. RAMASWAMI IYENGAR.
18-5-06.

2. First Councillor's remarks thereon :—

"(A). I agree. Only action of some sort requires to be quickly taken.

T. ANANDA ROW.
15-6-06.

3. Secretary's remarks :—

"First furnish Mr. Lawrence with the copies for which he has been asked to deposit money.

Then bring up separately the question of taking action with regard to the Draft Regulation."

K. S. CHANDRASEKHARA AIYAR.
21-6-06.

Submitted with the file accordingly.

T. K. S.
11-12-06.
S. N.
11-12-06.

4. The draft Treasure-Trove Regulation had been prepared after a good deal of discussion and consideration on the lines of the Government of India Act VI of 1878. I beg to suggest that this draft be circulated to Revenue Commissioner and Deputy Commissioners for opinion based on the experiences gained by them in dealing with cases of Treasure-Trove that came up before them for disposal under rules of 1867. After receiving their opinions, the Draft Regulation may be amended, if necessary, and published with a brief statement of objects and reasons in the *Mysore Gazette* and thereafter taken up for final consideration.

T. THUMBOO CHETTY.
11-12-06.

5. I have had the Draft Regulation revised, and a statement of objects and reasons put up.

6. Before it is published in the Gazette, a reference has to be made to the Hon'ble the Resident. A draft D. O. is put up.

K. S. CHANDRASEKHARA AIYAR.
4-1-07.

D. O. No. 414—J., dated the 24th January 1907, from Mr. V. P. Madhava Rao, C.I.E., Dewan, to Mr. S. M. Fraser, C.I.E., Resident in Mysore.

"I send herewith for your information copy of a Draft Regulation relating to Treasure Trove, and of a statement of objects and reasons in connection therewith.

It is proposed to publish the Draft in the Gazette for the information of the public before it is taken up for final consideration by the Durbar."

7. The draft D. O. was approved by the Dewan and the fair copy has been issued from the Dewan's office.

C. S. BALASUNDARAM IYER.
25-1-07.

8. Wait for a fortnight to allow of a reply if any being received and then resubmit with the usual notification (allowing three months' time).

K. S. CHANDRASEKHARA AIYAR.
30-1-07.

9. A fortnight has elapsed and no reply has been received from the Residency. A draft notification is submitted for approval as ordered.

T. THUMBOO CHETTY.

T. K. S.)
S. N.) 15-2-07.

K. S. CHANDRASEKHARA AIYAR.
15-2-07.

D. O. No. 1003, dated 25th February 1907, from Mr. F. P. Rennie, First Assistant Resident in Mysore, to the Dewan, Mr. V. P. Madhava Rao, C.I.E.

"I am desired to acknowledge, with thanks, the receipt of your D. O. letter of January 1907, enclosing a draft Regulation relating to Treasure-Trove in Mysore, and to say that the draft may be published in the Gazette as proposed."

10. (1.) Draft approved.
(2.) Please obtain the Dewan's approval also.

T. ANANDA ROW,
1st Councillor.
23-2-07.

11. The draft Regulation may be published in the Gazette. Also *vide* Residency D. O. No. 1003, dated 25th February 1907, herewith put up.

By Order,
C. S. BALASUNDARAM IYER.
28-2-07.

12. Issue.

K. S. CHANDRASEKHARA AIYAR.
1-3-07.

Draft issued.

To the Compiler, Mysore Gazette, No. J. 2709—Legis. 19-06, dated 6th March 1907.
Requests him to publish the draft Regulation in the Gazette. **[Serial No. 1.]**

13. The draft was published in English in the Gazette issue of the 21st March 1907 and in Kanarese in the issue of the 25th April. The period of three months fixed for the receipt of suggestions and criticisms has elapsed and nothing has yet been received. The file is submitted for orders. This may perhaps be brought up before the Legislative Council at the next meeting.

The member who will introduce this has to be settled.

T. K. S.
29-7-07.

14. Submitted for favor of instructions.

K. MYLARI RAO.
6-8-07.

15. Submitted to First Councillor. This is a short and probably non-contentious Bill. Perhaps Mr. Rangaswami Iyengar or Mr. Kantharaj Urs, may be asked to introduce this.

C. S. BALASUNDARAM IYER.
13-8-07.

16. Yes, with the Dewan's permission which please seek.

T. ANANDA ROW.
27-8-07.

17. Mr. Rangaswami Iyengar may be asked to kindly take up the Bill.

V. P. MADHAVA RAO,
Dewan. 31-8-0

18. Submitted to the Revenue Commissioner unofficially for favour of taking the necessary action for moving the Legislative Council in the matter.

K. MYLARI RAO.
2-9-07.

19. I shall take charge of the Bill as desired by the Dewan. I have retained one copy of the Legislative Notification No. J. 2709, dated 6th March 1907, and select papers on the subject together with Act VI of 1878 as modified by Act XII of 1891.

20. I should like to know if the last act has since been amended or any notification or rules have been issued in British India.

A. RANGASWAMI IYENGAR.
10-9-07.

P. S.—It is also desirable to compile a list of orders passed by Government in Treasure-Trove cases up to date.

A. RANGASWAMI IYENGAR.
10-9-07.

[*N.B.*—Paragraphs 21 to 32 which relate to the above have been omitted as being a mere matter of routine.]

D. O. No. 316, dated Bangalore, 19th February 1908, from Mr. A. Rangaswami Iyengar, B.A., B.L., Revenue Commissioner, to Mr. K. Mylari Rao, B.A., B.L., Secretary, Legislative Council.

"I return the file regarding the Treasure-Trove Bill as I understood the Dewan to say that Bills in future would be in charge of Members of Government.

2. I might suggest that the words "finder of the treasure" may be more fully defined and some provision may be made as regards the right of Government to treasure discovered in gomal and other lands which are not the absolute property of individuals."

33. The Revenue Commissioner has made two suggestions. He wishes that the "finder of the treasure" may be more fully defined. There is not much necessity for defining the expression. The difficulty that may be expected is to determine who the finder is. But, in any specified case, this has to be done according to the circumstances; it is a question of facts and the draft Bill provides in clause 7 (*a*) that the Deputy Commissioner should enquire into and determine the person by whom the treasure was found. As the phrase is not intrinsically difficult and will become so only under a particular set of circumstances, the necessity for defining the phrase is not clear.* I may add that the word is not defined either in the Indian Act or in the Travancore Bill.

Agree. K.S.C

34. As regards the second point raised by the Revenue Commissioner, the rights of Government are fully protected. In the case of gomal lands, etc., Government is the owner of such lands* and as such, the same procedure is applicable as to a private individual. It is a different question, however, to say that in the case of gomal lands, the finder is not to have a share in the treasure at all. But this is hardly expedient, considering the fact that the finder is entitled to half a share if the land belongs to a private individual. To deprive the finder of his share in the treasure if the land belongs to Government would be to make an invidious distinction.*

Vide Sec. 36, Land Revenue Code.

**I am not quite sure about this. K.S.C*

35. As the Revenue Commissioner is not to be in charge of the Bill (*vide* his *D. O.) the Bill is submitted for being taken up by another member of the Legislative Council.

S. P. RAJAGOPALACHARI.
10-7-08.

C. S. BALASUNDARAM IYER.
11-7-08.

Dewan's Order.

36. The Revenue Commissioner may be informed that there is no rule that members of Government alone should be in charge of Bills and that he may introduce the Bill.

K. MATTHAN.
27-7-08.

37. Write D. O. letter with reference to his D. O. of 19th July 1908.

C. S. BALASUNDARAM IYER.
28-7-08.

Put up a D. O. please.

S. P. RAJAGOPALACHARI.

38. Submitted with a draft D. O. letter. 27-7-08.

S. V. B.
29-7-08.

S. N.
29-7-08.

39. Issue.

C. S. BALASUNDARAM IYER.
29-7-08.

D. O. letter No. 68—L. C., dated Bangalore, 30th July 1908, from the Secretary to Government, Legislative Council, to the Revenue Commissioner in Mysore.

"With reference to your D. O. dated the 19th February 1908, stating that you understood the Dewan to say that Bills would be in charge of members of Government and returning the file in regard to the Treasure Trove Bill, I am directed to say that there is no rule that members of Government alone should be in charge of Bills, and that you may introduce the said Bill at a meeting of the Legislative Council in due course.

As regards your suggestion that the expression "finder of goods" may be more fully defined, I am to say that, as the expression is not intrinsically difficult and will become so only under a particular set of circumstances, the necessity for defining it is not clear. I may add that the expression is not defined either in the British Indian Act or in the Travancore Bill. The other point suggested in the D. O. letter under advertance, *viz.*, protection of Government right to Treasure-Trove in gomal and other lands not the absolute property of individuals, is already fully provided for by Section 36 of the Land Revenue Code.

The file relating to the Treasure-Trove Bill is herewith forwarded.

A form for obtaining the Dewan's sanction under Section 12 of the Legislative Council Regulation is also enclosed."

From Mr. A. Rangaswamiengar, Revenue Commissioner, No. 1675, dated 4th August 1908.

"Forwards a form duly filled up for obtaining the Dewan's sanction, returns the file, and requests that it may be sent to him with a clerk a few days before the date that may be fixed for introducing the Bill.

[*N.B.*—Paras 40 to 44, which relate to mere matter of routine are omitted.]

45. Permission was given to introduce the Bill before the Legislative Council at the meeting held on the 1st October 1908. The Bill was introduced and read at the meeting held on the 16th December 1908, when it was referred to a select committee for consideration and report. The Select Committee's report and the Bill as amended by the Committee were published in July 1909 and considered at the meeting of the Council held on the 2nd September 1909, when it was resolved to pass the same at a subsequent meeting of the Council with the amendment made at that meeting.

46. The Bill does not repeal or modify or is not inconsistent with any of the Acts or Regulations introduced into this State by the Governor-General in Council before the Rendition and appended to the instrument of transfer and the rules on the subject which are intended to be replaced by the Bill are not also one of those appended to the said instrument. It seems that the previous sanction of the Government of India is not therefore necessary for the Bill being passed into law and the Bill may perhaps be reserved and entered in the statement of business to be transacted at the next meeting of the Council for final adoption before being submitted to His Highness the Maharaja for sanction being given for promulgation as law. Submitted for orders.

T. K. S.
20-9-09.
S. N.
20-9-09.

47. The Treasure-Trove rules which the draft Regulation supersedes never received the sanction of the Government of India and have not been included in the schedule to the Instrument of Transfer though it cannot be denied that they were acted upon as having the force of law. The Residency themselves pointed this out to the Durbar on one occasion, and suggested the introduction of a Regulation on the model of the British Indian Act. The question is whether formal sanction of the Government of India is necessary before the Bill can be promulgated as law. So far as I have been able to see such sanction is not necessary.

S. HIRIYANNAIYA.
21-9-09.

48. Let me see the papers relating to the passing of the Legislative Council Regulation. There must be some understanding or allusion with respect to this point in that file.

K. S. CHANDRASEKHARA AIYAR.
29-9-09.

[*N.B.*—Paras 49 and 50 which relate to the above papers have been omitted being matter of a routine nature.]

51. Attention is invited to letter No. 294 addressed to the First Assistant to the Hon'ble the Resident and printed on page 22 of the collection put up. This letter

summarises the final understanding arrived at in the correspondence. Reference may also be made to the final letter of the Residency conveying the sanction of the Government of India, under certain conditions, to the promulgation of the Legislative Council Regulation as law. This is to be found on page 34.

52. The final understanding thus reached does not seem in any way to add to the list of measures which require the previous sanction of the Government of India before being passed into law (please see para 19 of the Instrument of Transfer). Please see also the portion marked B in the letter on page 22. At the same time the effect of the assurance given in the same letter in the portion marked A has also to be considered. I would also invite attention to the 3rd para of the Resident's D. O. of 3rd August 1906, printed on page 11. This refers to previous consultation with the Residency in cases of doubt, delicacy and importance even when the measures do not fall under Article 19 of the Instrument of Transfer. Such a *consultation* however has already been made in regard to the Treasure Trove Bill. The only question now is whether formal sanction of the Government of India has to be sought.

53. In a letter of the Residency, printed on pages 20 and 21, reference is made in paragraph 4 to the power vested in the Government of India by the Instrument of Transfer and *Usage*. It is not known what this *usage* exactly refers to.

54. One solution of the difficulty would be simply to intimate the Residency that the Bill in its amended form will be passed into law at a subsequent meeting. This procedure is however open to the objection that we may ourselves be setting up an inconvenient precedent quite unnecessarily.

S. HIRIYANNAIYA.
30-9-09.

55. I think that a reference to the Government of India may be made in the case of the present Bill, as it is intended to take the place of a set of rules passed during the British Administration, and regarded all along as having the force of law and as the present legislation has been undertaken partly at the suggestion of the Residency.

56. Please draft a letter to the First Assistant Resident.

K. S. CHANDRASEKHARA AIYAR.
1-10-09.

57. Draft letter to the Residency is submitted for approval. It is not known if this Bill as passed by the Council need be reprinted before being sent to the Residency, showing the difference between the Bill and the British Indian Act in italics.

T. K. S.
5-10-09.

S. N.
5-10-09.

58. Please type the draft now put up. Make the necessary changes in the copy of the Bill to be forwarded to the Residency early.

S. HIRIYANNAIYA.
6-10-09.

59. It is only in respect of rules given in the schedule to the Instrument of Transfer that a reference to the Government of India at this stage is needed. I do not see the necessity of asking for sanction of the Government of India. In fact, it seems to be wrong to do so. If however the Dewan thinks otherwise, I would defer to his opinion.

60. I am still not satisfied with the "or otherwise" in clauses 11, 12 and 13. It seems to be a contradiction in terms to allow an owner to make out his case after declaring the property to be ownerless. I think that the more logical course is to drop the 100 years' limitation inserted in Section 8. If the draft letter is sent to the Residency, I would suggest that this matter may be again considered as we shall have no chance of making any alteration after that is done.

H. V. NANJUNDAYYA,
Second Councillor.
12-10-09.

61. Please circulate to the 1st Councillor also.

T. ANANDA ROW,
Dewan.
12-10-09.

62. I think a reference to the Government of India is necessary before the Bill is finally passed into law. The Bill will be subjected to the scrutiny of the Legislative Department of the Government of India and this is a decided advantage to us.

K. P. PUTTANNA CHETTY.
14-10-09.

63. Please see the additions made by the Dewan to paras 4 and 11.

K. MATTHAN.

21-12-09.

64. It is respectfully submitted that it seems to be undesirable to ask for the advice of the Government of India on a detail in the Bill. It seems to be the duty of the Durbar to make up its mind as to the most suitable wording. If the Government of India offer any suggestions, they may be accepted. The suggested additions may be reconsidered.

C. S. BALASUNDARAM IYER.

23-12-09.

65. Please strike out the addition, and bring up at Council Meeting as suggested by 2nd Councillor.

T. ANANDA ROW.

25-12-09.

66. Note for the next meeting.

C. S. BALASUNDARAM IYER.

29-12-09.

67. This was considered at the Council Meeting held on the 12th January, when it was considered that the Bill may remain in the form passed by the Legislative Council. The question whether the Bill required the sanction of the Government of India was asked to be again looked into by the Secretary.

68. I shall be glad if the Assistant Secretary, Branch III, will verify the authorities on the matter and discuss the question with me at an early date.

C. S. BALASUNDARAM IYER.

18-1-10.

69. I have appended a note also on the subject.

S. HIRIYANNAIYA.

27-1-10.

Necessity for the sanction of the Government of India and communication to the Residency in matters of legislation.

Instrument of Transfer.

(1) We have to take the Instrument of Transfer as the starting point for this subject. Para 19 of this document requires that "all laws in force and rules having the force of law in the territories of Mysore when the Maharaja Chamarajendra Wadayar Bahadur is placed in possession of the said territories, as shown in the schedule annexed, shall be maintained and efficiently administered and except with the previous consent of the Governor-General in Council, the Maharaja of Mysore shall not repeal or modify such laws or pass any laws or rules inconsistent therewith." Para 20 of the same document lays down that "no material change in the system of Administration as established at the time of Rendition shall be made without the consent of the Governor-General in Council."

Practice before the establishment of the Legislative Council.

(2) For the moment we may disregard the latter provision altogether as very few matters of legislation likely to come before the Legislative Council fall under that category. Confining ourselves therefore to the provisions of para 19, the first thing to notice is that the previous consent of the Government of India is necessary only in regard to legislation affecting laws and rules having the force of law described in the schedule annexed to the Instrument of Transfer. This schedule was prepared after very careful deliberation and after a prolonged correspondence between the Durbar and the Residency. Though referred to in the Instrument of Transfer it was not till long after the Rendition that its preparation was completed (Please see page 18 of the printed papers on the subject.)

(3) Regarding an interesting discussion with the Residency on the question whether they should be consulted *prior* to the publication of drafts of Bills falling under para 19, please see correspondence ending with this office letter No. 277, dated 26th September 1904. This does not however affect the point now under discussion as it referred exclusively to cases falling under para 19 and to the period anterior to the formation of the Legislative Council.

(4) Agreeably to the understanding thus accepted on both sides, the Durbar invariably sent up drafts of all legislative measures falling under para 19 for the previous sanction of the Government of India and passed them into law only after the receipt of such sanction and this is also the present practice in regard to this class of cases. In matters not falling under para 19, the practice, was, up till the institution of this Legislative Council, not to seek the sanction of the Government of India. *Even previous consultation with the Residency or intimation to it of the projected legislation,* in such matters seems to have been carefully

avoided, *except in a few instances to be referred to presently.* As examples of this, I may quote the instances of the following Regulations :—

(i) I of 1898 (Village Sanitation Regulation), (ii) I of 1902 (Prevention of wrongful damage to the Cauvery Electric Power Transmission Line, (iii) III of 1904 (Societies' Registration Regulation), and lastly and latest of all, III of 1905 (Co-operative Societies Regulation). This list is not exhaustive, but it is sufficient to illustrate the practice over a sufficiently long period, and to justify the opinion that in cases not included in schedule appended to the Instrument of Transfer neither previous consultation with the Residency nor the sanction of the Government of India was deemed necessary.

(5) This practice, however was not uniformly observed. There are instances when in such cases we have given previous intimation to the Residency and even sought the formal approval of the Government of India. These cases can be grouped under two heads, *viz.*, (1) cases where the projected legislation was itself sufficiently important to justify a reference to the Government of India and (2) cases where they were undertaken by the Durbar at the instance of the Residency or as a result of correspondence with it. As an example of (1), I may cite the instance of the Infant Marriage Regulation which being an absolutely novel piece of legislation did not require the sanction of the Government of India. Nevertheless, evidently because of its importance the draft of the Bill seems to have been forwarded demi-officially to the Resident. The latter in acknowledging it admitted that the sanction of the Government of India was not required but asked to be furnished officially with a copy for sending it up to the Government of India for information.

(6) As an instance of (2), I may cite the Factories Regulation (No. IV of 1892) and the Mysore Mines Regulation, 1897. The former was passed by the Durbar at the repeated requests of the Residency and probably on this account formal sanction was sought. The Mysore Mines Regulation was passed, after the previous sanction of the Government of India, under similar circumstances. Even if this piece of legislation had been undertaken by the Durbar *suo motu*, its importance would probably have justified a previous reference to the Government of India.

(7) It is necessary to mention that in cases where no sort of reference was made to the Residency previous to the passing of the law, copies of the Regulation *as passed into law* were forwarded to the Residency for information. On one such occasion the Regulation with a brief statement of objects and reasons having been forwarded, the Resident requested that a full explanatory statement should accompany the copies of Regulations sent up. This was accepted by the Durbar for the time being but the practice was not adhered to and was deliberately abandoned during the time of Sir P. N. Krishna Murti on the ground that the Durbar were not under any obligation to furnish such explanatory statements.

(8) I may note in passing that in one instance the Resident formally took the objection that the sanction of the Government of India should have been obtained before the passing of the measure into law on the ground that it interfered with rules existing prior to the Rendition but the objection was answered by the Durbar by pointing out that no such interference resulted by the legislation then in question. (The Sringeri Jahgir Inam Settlement Regulation, IV of 1897.)

(9) From the above it is clear that there is abundant authority both in theory and practice for the proposition that till the year 1905 no reference of any kind to the Residency was necessary in cases not falling under para 19 of the Instrument of Transfer, unless for special reasons the Durbar chose to make such a reference.

Practice after the formation of the Legislative Council.

(10) The establishment of the Legislative Council in Mysore in 1907 introduced a slight innovation into this procedure. Though the sphere of authority of the Government of India over the Durbar in matters of legislation was not in any way enlarged, yet the Residency required and the condition was accepted by the Durbar that before any legislation could be placed before the Legislative Council an intimation of such intention should be conveyed to the Residency, irrespective of the fact whether the draft Regulation was or was not included in the class of cases referred to in para 19. After giving such intimation the Bill is placed before the Legislative Council and considered by that body. If the Bill is one that requires the sanction of the Government of India, a second reference is made officially to the Resident after the Legislative Council has considered the Bill and the Report of the Select Committee, if any, but before it is finally adopted by that body. But such a reference is not necessary in cases where previous sanction need not be obtained. For example, the City of Mysore Improvement Regulation Amendment Bill was passed into law by the Legislative Council and received the assent of His Highness without a second reference to the Residency. The procedure on these points has been fully explained in para 3 of Mr. Chandrasekhara Aiyar's letter to the Residency No. 294, dated 17th October 1906, which has been accepted by the Residency.

(11) From the above it is clear that though in every case we have now to give intimation to the Residency before embarking on any Legislation to be placed before the Legislative Council, our right to pass measures into law in cases not falling under para 19 without a second reference to the Residency remains unaffected. Such a second reference is necessary only in cases detailed in the schedule.

(12) Applying these rules to the Treasure-Trove Bill now before the Council, I am of opinion that strictly speaking we need not ask for the formal sanction of the Government of India as it has been excepted from the schedule to the Instrument of Transfer. But if it is considered advisable to simply apprise the Residency of our intention to pass the Bill on the ground of our having adopted some amendments which do not find a place in the British Indian Statute or because the rules were, *in practice*, observed as having the force of law, we may do so without formally seeking the sanction of the Government of India for the measure.

(13) I have since seen the confidential papers marked A* This requires us to decide whether the Treasure-Trove Bill falls under the category of matters "involving doubt, delicacy or importance."

S. HIRIYANNAIYA.
10-2-10.

*Legis. F. No. 4 of 03 04. Sl. 1-4. Confidential File 3 of Dewan's Office.

70. The above note by Mr. Hiriyannaiya clearly explains the position.

71. The Chief Commissioner's notification regarding Treasure-Trove has not been included in the schedule to the Instrument of Transfer and does not therefore come within the scope of Article 19 of that instrument.

72. The draft Regulation was sent to the Residency before it was placed before the Legislative Council—in accordance with the understanding arrived at in 1904 and 1906.

73. No formal sanction of the Government of India is therefore necessary to passing the Bill as law, and no reference to Residency necessary.

74. The Bill may be finally passed by the Legislative Council and enacted as law if approved by His Highness the Maharaja.

C. S. BALASUNDARAM IYER.
10-2-10.

75. The present piece of legislation supersedes rules which were in practice during the commission days. There is also one point in regard to which we would like to have some light and leading. For these reasons a reference may, I think, be made to the Residency.

T. ANANDA ROW,
Dewan.

Submitted to His Highness.

76. (1) I submit for approval the draft of a letter to the Residency requesting that the sanction of the Government of India may be obtained for passing into law the draft Treasure-Trove Regulation which has recently been before the Legislative Council.

(2) In the office notes on the file there is some discussion as to whether the passing of the Regulation requires the sanction of the Government of India. The doubt arises in view of the fact that the existing rules* on the subject issued by the Chief Commissioner in 1867, which the present Regulation is intended to replace, were published without the sanction of the Government of India and do not find a place in the schedule referred to in Article 19 of the Instrument of Transfer. As these rules were in practice regarded as having the force of law both before and after the Rendition, it seems desirable to ask for the sanction of the Government of India to the measure. The First Councillor is also of opinion that sanction may be applied for, but the Second Councillor is of a contrary opinion. I submit the matter for orders. Such a reference to the Government of India may elicit from them useful criticism on the point referred to in the Second Councillor's minute dated 11th October 1909, the more especially as our proposal on the point is somewhat of a departure from the rules now in force in British India which the proposed legislation follows in other respects.

*Notification No. 6, dated 17th April 1867.

T. ANANDA ROW.
21-2-10.

Order.

77. Approved.

K. R. W.,
H. H. the Maharaja of Mysore.
24-3-10.

78. Issue.

C. S. BALASUNDARAM IYER.
26-3-10.

To the First Assistant to the Hon'ble the Resident in Mysore, No. Pol. 831, dated 30th March 1910.

[Serial No. 2.] Forwards the Bill with some observations and requests him to obtain the sanction of the Government of India for its being passed into law.

From the same No. 2650, dated the 29th April 1910.

[Serial No. 3.] "States that there is no objection for the Bill being passed into law and requests that 9 copies of the Bill as passed into law may be forwarded for information:"

79. A copy of the Bill has already been submitted to the Dewan for information. In the Council meeting at which the Bill was last discussed it was resolved to pass the Bill at a subsequent meeting. The Government of India's sanction having been obtained, the Bill will be entered in the statement of business to be transacted at the next meeting of the Council for being passed into law and thereafter submitted to His Highness for sanction for promulgation as law.

T. K. S.
30-4-10.

S. N.
30-4-10.

80. To be entered in draft agenda for next meeting.

81. Submitted to 2nd Councillor for information.

S. HIRIYANNAIYA.
30-4-10.

82. Seen.

H. V. NANJUNDAYYA.
30-4-10.

83. The Bill was placed before the Legislative Council at the meeting held on the 15th current and was finally passed by that body. The Bill has now to be submitted to the Dewan for His Highness' sanction being obtained for the promulgation of it as law. Submitted with a copy of the Bill as finally passed by the Council for the Dewan's signature as required by Rule 52 of the Legislative Council Rules.

T. K. S.
29-8-10.

S. N.
29-8-10.

S. HIRIYANNAIYA.
31-8-10.

C. S. BALASUNDARAM IYER.
31-8-10.

Submitted to His Highness.

84. With reference to the Treasure-Trove Bill which was forwarded to the Residency with our letter No. 831—Pol., dated the 30th March 1910, (approved by His Highness in Order dated 24th idem) the Residency has replied to say that there is no objection to the Bill being passed into law.

(2). The Bill was finally passed by the Legislative Council at its last meeting, and I now solicit His Highness' formal sanction to the Bill being promulgated as law.

T. ANANDA ROW.
4-9-10.

Order.

85. Sanctioned.

K. R. W.,
His Highness the Maharaja of Mysore.
6-9-10.

86. Issue.

C. S. BALASUNDARAM IYER.
9-9-10.

87. Draft to the Compiler, *Mysore Gazette*, ordering the publication of the Bill as Regulation No. III of 1910 is submitted for approval.

T. K. S
13-9-10.

S. N.
13-9-10.

88. Issue.

S. HIRIYANNAIYA,
13-9-10.

No, J. 823, dated 14th September 1910, to the Compiler, Mysore Gazette.

[Serial No. 4.] Orders the publication of the Bill as Regulation III of 1910.

89. Spare copies of the Regulation have been received. They have been verified an found correct. Copies have to be sent to the Residency as usual. A draft letter is herewit put up.

S. V. S.
22-9-10.

S. N.
22-9-10.

90. Issue.

S. HIRIYANNAIYA.
23-9-10.

No. Pol. 296, dated 27th September 1910, to First Assistant Resident.

[Serial No. 5.] Forwards 10 copies of the Regulation, and requests that one copy ma as usual be forwarded to H. H. the Nizam's Government.

TABLE OF CONTENTS.

1. Chief Commissioner's Notification No. 6 dated 17th April 1867 1
2. Speech by the Hon'ble Mr. Bayley in moving for leave to introduce into the Legislative Council of India the Bill to amend the law relating to Treasure-trove on the 22nd November 1876 2
3. Speech by the Hon'ble Mr. Bayley in introducing the Bill on the 29th Nov. 1876 3
4. Statement of Objects and Reasons published with the Bill 6
5. Speech by the Hon'ble Sir Edward Bayley in presenting the Report of the Select Committee on the 31st January 1878 7
6. Abstract of the Proceedings of the Council of the Governor General of India for making Laws and Regulations, assembled on the 13th February 1878 ... *ib.*
7. Act VI. of 1878, The Indian Treasure-trove Act 8
8. Para 3 of Letter No. 3092-1665 dated 17th November 1886 from the Assistant to the Resident in Mysore to the Dewan of Mysore 12
9. Para 3 of Letter No. 30 Camp Mysore, dated 15th December 1886 from the Dewan of Mysore to the Resident in Mysore 13
10. Legislative Secretary's Memo. dated 6th August 1889... ... ... *ib.*
11. Legislative Secretary's note dated 22nd May 1891 14

    Mr. Thumboo Chettiar's remarks thereon dated 23rd May 1891 ... ... *ib.*

    Legislative Secretary's note in reply ... . *ib.*

    Mr. Thumboo Chettiar's note thereon dated 12th June 1891 15

    Mr. P. Chentsal Rao's note dated the 13th June 1891 ... ... *ib.*

    Legislative Secretary's note dated 8th April 1892 ... ... *ib.*
12. Legislative Secretary's Memo. dated March 1893 ... ... *ib.*
13. Remarks of Councillors on the Draft Regulation and Mr. P. Chentsal Rao's note dated 11th May 1893 17
14. Mr. V. N. Narsimiengar's Memo. dated 22nd September 1893 18
15. Mr. P. Chentsal Rao's remarks thereon dated 22nd September 1893 ... *ib.*
16. Alterations made under Mr. Chentsal Rao's orders in the draft Regulation ... 19
17. Dewan's remarks dated 31st July 1895 on the draft Official Memo. No. Pet. 162 dated 16th July 1895 20

    Mr. Krishna Murti's remarks thereon dated 9th August 1895 ... ... *ib.*
18. Legislative Secretary's Memo. dated 7th September 1895 with the re-draft ... *ib.*

    Mr. Thumboo Chettiar's remarks thereon dated 11th September 1895 ... *ib.*
19. General and Revenue Secretary's remarks dated 1st August 1896 21

    Mr. B. Ramaswamiengar's note dated 12th August 1896 ... ... *ib.*

    Draft of a notification prepared by the General and Revenue Secretary on the 20th August 1896 as per the Dewan's order (Not issued).

SELECT PAPERS ON THE SUBJECT

OF

THE LAW RELATING TO TREASURE-TROVE.

No. 1.

Chief Commissioner's Notification No. 6, *dated the* 17*th April* 1867.

In supersession of Circular No. 6692-Gl. 75 of 28th February 1867. *Vide Mysore Gazette* No. 50 of 16th March 1867.

In order to remove doubts, which have arisen as to the proper procedure in cases of treasure-trove, the Officiating Commissioner is pleased to direct that the following rules, adapted from Regulation XI of 1832 of the Madras Code, be observed in such cases in the Courts of Mysore and of Coorg.

In Coorg, the Superintendent's Court will take the place assigned in these rules to that of the Deputy Superintendent of a District.

1. Whenever any hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones, or other valuable property, may be found buried in the earth, or otherwise concealed, within any part of the territories of Mysore or of Coorg; and, after due notification, the owner thereof may not be discoverable, such hidden treasure shall become the property of the person or persons who may have found the same, provided it shall not exceed, in amount or value, the sum of one lakh of Rupees, and provided the finder or finders shall have conformed to these rules.

2. Whenever any person may find hidden treasure, of the descriptions stated in the foregoing section, he shall give immediate notice thereof to the Deputy Superintendent of the District, within whose jurisdiction the treasure may have been found; and shall, at the same time, deposit the treasure in the Deputy Superintendent's Court, with an exact inventory thereof.

3. The Deputy Superintendent, receiving a deposit as above directed, shall return a receipt for the treasure deposited, after causing the same to be carefully compared with the inventory; and shall issue a public notification, in the current languages of the country, to be published and affixed in his own Court-house, requiring all persons who may have any claim or right to the treasure in deposit, to attend in person or by vakil, and prove their title thereto, within six months from the date of the notice.

4. It shall be the duty of the Amildar in whose jurisdiction the treasure was found, acting under the instructions of the Deputy Superintendent, to bring forward and to support, in conformity with the foregoing provision, any claim of right which Government may appear to possess to such treasure. In the event of any claim of right being preferred, either on the part of individuals or of Government, pursuant to the prescribed notification, the Deputy Superintendent or his Assistant shall institute a summary inquiry into the claim preferred; and if the title of Government, or other person, so claiming the treasure in deposit, or any part thereof, be clearly established, he shall adjudge the same accordingly; subject to reimbursement of all expense incurred by the finder of the treasure, as well as to such compensation for the discovery of it as may in each case appear just and reasonable.

5. If no claim of right be preferred, either by Government, or by any individual, within the period limited by the notification directed in section 3 of these rules, or if the claim or claims so preferred shall not, on a summary inquiry,

appear to be well founded, and the amount or value of the hidden treasure found at the same time or in the same place, shall not exceed one lakh of Rupees, the Deputy Superintendent shall adjudge the same to the person or persons who may have discovered the treasure, and deposited it in the Court, as required by section 1; subject only to the actual expense which may have been incurred in adopting the measures prescribed by these rules.

6. If the amount or value of any hidden treasure found at the same time, or in the same place, shall exceed one lakh of Rupees, and no claim of right thereto be established, judgment shall be given according to the preceding section, in favor of the person or persons, who may have discovered and deposited the treasure to the amount of one lakh of Rupees; and the excess above that sum shall be declared at the disposal of Government.

7. If any person discovering hidden treasure of the description specified in section 1 of these rules, shall not, within one month after finding the same, give notice to the Deputy Superintendent in conformity with section 2, and make the deposit thereby required, he shall be considered to have forfeited all right and title to the treasure, as well as all claim to a reimbursement of expense, compensation or reward, under the provisions of these rules; and the treasure so clandestinely withheld from public investigation, shall on a summary suit, by any subsequent claimant of right, and proof of a just title thereto, be adjudged to the legal owner, with interest and costs; or if no private claim be established, shall be liable to confiscation to Government.

8. The summary decisions of the Deputy Superintendents, which may be passed under these rules, shall be open to a summary appeal to the Superintendents, under the general rules in force relative to summary appeals.

9. The decisions of Superintendents on such appeals, shall be final; unless the Judicial Commissioner should, on the face of the decree, or on inspection of any documents exhibited with it, see just and sufficient ground for admitting a second summary appeal; in which case only, such further appeal may be admitted, and proceeded upon, under the general rules in force for summary appeals.

No. 2.

Speech by the Hon'ble Mr. Bayley in moving for leave to introduce into the Legislative Council of India the Bill to amend the law relating to Treasure-trove, on the 22nd November 1876.

The Hon'ble Mr. Bayley moved for leave to introduce a Bill to amend the law relating to treasure-trove. He did not propose to detain the Council with any very full statement of the law which this Bill was designed to amend. He would, for the present, confine his remarks merely to explaining the necessity for some amendment of the law, and this he would do by stating, briefly, that in the first place the law as it now stood was in many parts of India very uncertain, and, secondly, that even where it was certain, it was quite ineffectual at least for any useful purpose. There were in existence two old Regulations, (V of 1817 and XI of 1832) one affecting the Bengal Presidency, and the other affecting the Madras Presidency. With regard to the Non-Regulation Provinces on the Bengal side, it was probable, though by no means certain, that the Bengal Regulation applied to them. In the course of discussion upon certain recent projects to define the substantive law in some of the Non-Regulation Provinces, this point was indicated as one which required determination in some way or other, and accordingly provision was made by legislating in the affirmative as respects several of those Provinces. But, in the meantime, a correspondence was

sent up by the Government of Bombay, which showed that there was no distinct enactment affecting that Presidency, and that it was extremely doubtful what law on the subject was there in force. Under these circumstances, he thought the Council would admit that, on the ground of the uncertainty of the law, there was at least a necessity for some legislative action in regard to the Presidency of Bombay, and possibly still as to one or two of the Non-Regulation districts of Bengal. But he would propose to go somewhat further, and to point out that the law, even where it was certain, was nevertheless ineffectual.

The object of the law, as it now stood in Madras and Bengal, was to define the rights in treasure-trove, and to protect what were supposed to be the rights of the State. He might say, roughly, that the purport of the law in this respect was to assert the general right of the State, but to waive that right upon certain conditions in favour of the finder, where the property did not exceed the value of a lakh of rupees. As a matter of fact, he believed—he might perhaps say he was certain—that during his official experience in India, which now extended to above a third of a century, no single case had occurred of treasure-trove exceeding one lakh of rupees in value having ever been found—certainly no well-authenticated and ascertained case. And therefore the law had never brought one single rupee's worth of revenue to the Government Treasury.

But there nevertheless remained a kind of fear widely diffused that Government may claim any treasure-trove. Moreover claims were often made by another class of claimants whose not unreasonable rights the present law wholly ignored, but which the Bill would define and protect. The natural result of all this was that, dreading any adverse interference, the finder, as a rule, endeavoured to conceal the fact that he had found anything, and so, in many cases, articles of extreme value, both in an artistic and historic point of view, had been lost or defaced.

He thought, therefore, he might say that the law as it now stood was both ineffectual and mischievous. From what he had said, it might be gathered that it was his opinion that this defect in the law proceeded from an inherent error in the policy on which it was founded. When he said that this was his opinion, he meant that it was the opinion which was now accepted by the Government of India, and had also been accepted by the Secretary of State, to whom, for certain reasons, it was necessary to refer this project of law before introducing it into the Council.

If leave was given to introduce a Bill, he proposed, in doing so, fully to explain its details, and in connection with them to enter more fully into the policy which it was proposed to substitute for that which governed the existing law.

The motion was put and agreed to.

No. 3.

Speech by the Hon'ble Mr. Bayley in introducing the Bill on the 29th November 1876.

The Hon'ble Mr. Bayley introduced the Bill to amend the Law relating to Treasure-trove, and moved that it be referred to a Select Committee with instructions to report in two months. When he obtained leave to introduce the Bill he said that it would possibly be necessary for him to detain the Council on the present occasion for some time to explain the nature of the existing law, the policy which regulated it, and the reasons for which it was proposed to substitute another, and he hoped a better, policy. He would therefore take the opportunity of giving an explanation on these points. He was afraid, however, he must go back somewhat to first principles, and to enable him to do so briefly, he should ask leave to read a few extracts from a well-known book, the commentaries of the learned American Jurist Kent, which would enable him to place the matter in a clear light before the Council.

All systems of Law recognized the means of acquiring personal property by what was called "occupancy," that was to say, by simply taking possession. Kent said that—

"Though priority of occupancy was the foundation of the right of property in the primitive ages, and though some of the ancient institutions contemplated the right of occupancy as standing on bread ground, yet in the progress of society this original right was made to yield to the stronger claims of order and tranquillity. Title by occupancy is become almost extinct under civilized Governments, and it is permitted to exist only in those few special cases in which it may be consistent with the public welfare."

It was the case still, no doubt, that if a person, on ground to which nobody had a claim, found any article for the first time which had never before been the property of any other human being, he was at liberty to convert it to his own use, and as there could not in such a case be any rights adverse to his, the property vested in him. But as a matter of fact, there were very few places and very few instances where other rights had not been, during the progress of civilization, created and defined by special provisions of law. Although, therefore, it might be said that, if a man found an article to which nobody else had or ever had had any claim, it was his, and he might do with it what he liked, yet such instances were extremely rare. What was far more usual was, that a person found something which had become in some way or other the subject of property previously; that was to say, that some one else had in some way acquired some sort of right to it.

Now the subject of this Bill, which was technically called "Treasure-trove," belonged to the latter class. One of the old Regulations, to which Mr. Bayley alluded last time as still in force in certain parts of India, described it as "hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones or other valuable property, which may be found buried in the earth, or otherwise concealed within any part of the territory subject to this Presidency," &c. That was to say, it was valuable property in which some one else had, at some time or other, acquired already some sort of right. All systems of Municipal law did, it might be said, at least in theory, provide for the perpetual devolution in some way or other of rights of property once acquired, and the rights of the owner in such property were in almost every conceivable case fenced round with penalties. Any person, therefore, who either dishonestly or ignorantly neglected, as not unfrequently happened, the distinction between the two kinds of finding—between the finding, that is, of articles which never had been, and of those which already had been, the subject of property—was apt to find himself in very awkward contact with the provisions of the criminal law.

Of course, under these circumstances the first object of any law on the subject of treasure-trove must be to provide for tracing out the history of previous rights, and such a provision would accordingly be found in the present Bill. But there was considerable difference in the circumstances of various cases; for, although in theory such rights of property might be supposed always to exist, even if temporarily in abeyance, in the articles which formed treasure-trove, yet in a very large number of cases it was practically impossible, either to discover who the previous owner of the property had been, or on whom in the course of years the right of property which primarily existed in such articles had devolved.

Of course, these rights might sometimes be proved, and very extraordinary instances had occurred of such rights being capable of substantiation after very long periods of time. Mr. Bayley could recollect a case himself in which a gentleman, who was then a midshipman in the Navy, lost certain particular property in the wreck of the *Royal George*, and who was able to recognise and to recover it fifty years later; and there were no doubt instances in which the persons originally owning property, or their representatives, had been able to establish distinctly their right to it, though it had passed out of their actual possession for a much longer time than fifty years. But, on the other hand, there were other cases in which it was practically impossible to trace the original owner or his representatives. Three cases came the other day to his (Mr. Bayley's) knowledge in which it was morally certain that the property (in one instance of

considerable value) had passed from the rightful owner's possession at least eighteen hundred years ago. Under such circumstances it was of course useless to attempt to trace original rights of property. The Bill therefore, while prescribing a procedure for discovering, where possible, the original owners of treasure-trove, or their representatives, proposed to confine it to property of which there was not good presumptive evidence, either in the nature of the property itself or otherwise, that it had been concealed or lost for more than a hundred years. The term of a hundred years was no doubt a purely arbitrary limit, and might be considered in Committee; but he imagined that, as a matter of fact, there were very few cases of property in which it would be possible in India to make any successful investigation, or to gain any trust-worthy information as to the original owners or their existing representatives, where it had been lost or concealed, for more than a hundred years. Of course, if any persons could substantiate their right to property, the law would restore it to them. But it might be said that any such rights with regard to treasure-trove could only in occasional instances be established, and practically the cases for which the proposed law had mainly to provide were those in which all trace of the original owners was lost, or in which it was impossible to trace their representatives, and the task which the Council had before them was to regulate the devolution of the right of property in such cases.

He would now again, with the permission of the Council, refer to *Kent's Commentaries*, and would read a passage in which the author described the policy which had ruled various systems of law on the subject of treasure-trove.

Mr. Kent said—

"The common law, originally, according to Lord Coke, left treasure-trove to the person who deposited it, or, upon his omission to claim it, to the finder. The idea of deriving any revenue from such a source has become wholly delusive and idle. Such treasures, according to Grotius, naturally belong to the finder; but the laws and jurisprudence of the Middle Ages ordained otherwise. The Hebrews gave it to the owner of the ground wherein it was found; and it is now the custom in Germany. France, Spain, Denmark and England, to give lost treasure to the Prince or his grantee; and such a rule, says Grotius, may now pass for the law of Nations. The rule of the Emperor Hadrian as adopted by Justinian, was more equitable, for it gave the property of treasure-trove to the finder if it was found on his own lands; but if it was fortuitously found in the ground of another, the half of the treasure went to the proprietor of the soil, and the other half to the finder; the French and Louisianan Codes have adopted the same rule."

Mr. Bayley said, at the last meeting of the Council, that the principle which the existing Indian law, so far as there was any law, had adopted, was practically that of the Middle Ages. It might be said to assume the right of the State, but to waive it on certain conditions and within certain limits in favour of the finder. He thought that, on broad principles of equity, that principle might very fairly be defended. Where no prior claim could be proved, it was at least a fair contention that property of any value so found should pass to the public treasury, and be used for the purposes of the general community. The real objection in adopting this principle was, that in practice it could not be enforced, and as in the case of all other laws which could not be enforced, it became not only useless, but mischievous and demoralizing. He did not mean to assert that the real reason of the provisions of the Indian law, or of the English law from which it was mutated, showed that it actually was founded on this principle. He believed, as a matter of history, that it was founded rather on feudal ideas which it was unnecessary here to discuss. The principle which the present Bill proposed to adopt was that, practically, of the old Roman law of the Emperor Hadrian, and of the French and Louisianan Codes, and to a certain extent also, as he would presently explain, of the law as it now stood (for it had been not very long since altered) in Denmark. The Bill proposed to give the property in treasure-trove to the finder, provided only that he would follow the very simple procedure which the law would require, for securing a hearing of the possible claims of other persons. The only deduction in his rights which would take place under this law would be that in favour of the owner of the ground on which the property might be found. It was perhaps not quite so easy to defend the natural equity of this provision, because treasure-trove could hardly be called any part

of the soil in or on which it was found. But at the same time there was no doubt that, if a man knew that there was a likelihood of finding treasure on his land, he had the power of preventing anybody else from coming on the land and from searching for the treasure; and, what was still more important, as a matter of fact, where such rights or *quasi* rights were wholly ignored, they were always, nevertheless, very usually put forward, and attempts made to enforce them more or less irregularly in some way or another by the owner of the soil.

It was expedient, as a matter of convenience, therefore, to give to the owner of the soil in which treasure was found some concession; and the Bill provided for giving one-fourth of the treasure found to the owner of the soil, and the remainder to the finder.

The Bill further proposed to adopt one other provision which, as indicated before, was taken from the modern law of Denmark. This was to give the Government a claim, on the payment of a specified percentage in excess of the intrinsic value, to the possession of such articles as it should consider worthy of preservation in the interests of the public, as being of historic or artistic interest. This provision was inserted some years ago in the law of Denmark, and the practical result had been to make the Government collection of national antiquities in that country the finest now existing. In India such a provision would be of the very greatest value. There was much hidden treasure in India, and as he (Mr. Bayley) could say from personal knowledge, much was being perpetually brought to light in various parts of the country, and a very large proportion of it was of importance, as illustrating either the history, the social habits, the religious beliefs, or the artistic skill, of the races who inhabited the country in past times. In truth, most of the only trustworthy information which we possessed of the history of India antecedent to the Muhammadan invasion was furnished by articles, especially by coins, discovered as "treasure-trove."

It was therefore an object to prevent articles of this kind from being lost or destroyed, and the provision the Bill proposed to make was, he believed, sufficiently liberal to secure to the Government an opportunity of purchasing such articles as they might consider of real public interest. Indeed, the present Lieutenant-Governor of the Punjab, Sir Henry Davies, had recently acted on this principle in a very important case, with the consent of the finder, and had preserved from destruction articles of extreme historic interest.

He had nothing more to say as to the principle of the Bill. He admitted that the Bill in its present shape was little more than tentative, and by the courtesy of the consuls for Denmark and the Netherlands, he hoped shortly to receive copies of the laws which prevailed in their respective countries, and from these and from other sources of information, he hoped to lay before the Select Committee materials from which he trusted they would be able to make the Bill in its final shape worthy of the Indian Statute-book, which already deserved so high a place in the systems of modern legislation.

The motion was put and agreed to.

No. 4.

Statement of Objects and Reasons published with the Bill.

The law of treasure-trove is in a very unsatisfactory state. At present, there is one law in Madras and another in Bengal, while it is doubtful what the law is in Bombay, and in the three Presidency-towns probably the English law prevails. Moreover, the law everywhere is bad and ineffective, and gives every inducement to finders to conceal or make away with their discoveries; and yet there is a good deal of treasure buried in India, and much of it (if we may judge by what has already been found) of very high antiquarian and historical interest.

2. Under these circumstances, the present Bill has been prepared. It provides, among other things, that:—

(*a*) the finder shall give notice to the Collector of the District of the discovery of treasure, and either deposit the treasure in the Government Treasury, or give security for producing it when required;

(*b*) notice shall be given by the Collector to the owner or owners of the land where the treasure was found;

(*c*) the discovery of the treasure shall be advertised, and all claimants desired to come forward within six months;

(*d*) if there is reason to believe that the treasure was hidden or deposited more than a hundred years previously, no claim of any outside person shall be admitted;

(*e*) in the case of treasure found in a public place, such as in digging a road, a railway, or a canal, such treasure shall vest, if more than a hundred years old, or if unclaimed, in the proportion of three-fourths in the finder and one-fourth in Government; and

(*f*) if the land or other property on which the treasure is found belongs to a private party, then the latter shall receive the Government share, unless the finder has made any previous agreement with such owner or owners, in which case the division shall be regulated according to that agreement.

3. The Bill adopts the principle of certain recent legislation in the north of Europe, which has practically worked well.

No. 5.

Speech by the Hon'ble Sir Edward Bayley in presenting the report of the Select Committee on the 31*st January* 1878.

The Hon'ble Sir Edward Bayley presented the report of the Select Committee on the Bill to amend the law relating to Treasure-trove. He said the report of the Committee would, he thought, explain itself. It would be observed that they had received a very large number of communications on this Bill, and its provisions had been, considering its importance, the subject of a very unusual amount of criticism. The result had been that considerable changes had been made. It would be seen that no substantial change had been made in the policy of the Bill, but the wording of it had been very considerably altered, with the effect, he hoped, of making it a practical working measure. There being no real change in the policy of the Bill or in any of its substantial provisions, the Committee did not think it necessary to recommend that it should be republished, and he therefore now presented the report, and hoped that it would be shortly taken into consideration by the Council.

No. 6.

Abstract of the Proceedings of the Council of the Governor General of India for making Laws and Regulations, assembled on the 13*th February* 1878.

The Hon'ble Sir Edward Bayley moved that the report of the Select Committee on the Bill to amend the law relating to Treasure-trove be taken into consideration. He said that, as it was now some time since this Bill was first introduced into this Council, and as the form, though not the substance, of the Bill had been considerably altered since it first came under consideration, he thought it might perhaps be right, in asking the Council to take the report of the Select Committee into consideration, to say a few words to refresh their memory as regards the reasons for and the objects of the Bill. The reasons for the Bill—the reasons for which it was

required—were simply that the law throughout the country was partly uncertain, partly diversified, and partly unworkable.

The old law, that is to say, the existing law, was founded upon the principle that all treasure-trove lapsed to, and became the property of the State. That was a principle which was in theory perfectly defensible and was not to be denied. But as a matter of fact, especially in India, it was impossible to enforce it, and the attempt to do so had only resulted in creating a series of offences which it was difficult to punish, which were also demoralising, and had also led to the destruction of many valuable articles in consequence of the temptations for concealing their discovery. The object of the present Bill was to make the law certain and to place it on a workable foundation. The principle which the Committee had followed was to secure in the first place the intimation of the finding of the treasure, to secure the rights of all persons who could establish an antecedent property in it; and only where no such antecedent right could be established, did the right to the property come to be dealt with under this law. When the property was declared to be without any antecedent owner, then the division of property in the article found was made between the finder and the owner of the place where it was found. The reason for giving this right to the owner of the soil was that, although perhaps it was not a right which could very easily be defended on principle, yet as a matter of fact such right was very largely asserted by persons who were owners of the soil, and the assertion of vague and antagonistic rights had given rise to many disputes and had also frequently led to the concealment of property found. It was therefore proposed to place the finder and the owner of the property in certain definite relations in regard to that property; and finally the Bill provided means whereby the Government would be able to procure for the national museum articles of historical or archæological value which it might be desirable to secure. Special provisions had been largely introduced into legislation in Europe for this purpose, and had the effect of preserving for national use much very valuable property and articles of great historical importance which would otherwise have been destroyed. He hoped that such might also be the result in India. But the Bill, being one which was founded on a principle entirely new to India and intended for a state of society which was not exactly the same as that in Europe, might possibly be found practically to require amendment in its details. It was at present launched in the best form which we were able to give it, and he had no doubt that if experience showed that it required modification, the Council would so modify it.

The motion was put and agreed to.

The Hon'ble Sir Edward Bayley also moved that the Bill as amended be passed.

The motion was put and agreed to.

No. 7.

ACT No. VI OF 1878.

(Received the assent of the Governor-General on the 13*th February* 1878.)

An Act to amend the law relating to Treasure-trove.

Whereas it is expedient to amend the law relating to treasure-trove; it is hereby enacted as follows:—

Preliminary.

Short title. 1. This Act may be called "The Indian Treasure-trove Act, 1878:"

Extent. It extends to the whole of British India;

Commencement. And it shall come into force at once.

2. The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule.

Repeal of enactments.

3. In this Act—

Interpretation-clause.

"Treasure" means anything of any value hidden in the soil or in anything affixed thereto:

Treasure.

"Collector" means (1) any Revenue-officer in independent charge of a District, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act.

Collector.

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing.

Owner.

Procedure on finding Treasure.

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

Notice by finder of treasure.

(*a*) of the nature and amount or approximate value of such treasure;
(*b*) of the place in which it was found;
(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require.

5. On receiving a notice under section four, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

Notification requiring claimants to appear.

(*a*) he shall publish a notification in such manner as the Local Government from time to time prescribes in this behalf, to the effect that, on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(*b*) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section five, shall forfeit such right.

Forfeiture of right on failure to appear.

7. On the day notified under section five, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

Matters to be enquired into and determined by the Collector.

(*a*) the person by whom, the place in which, and the circumstances under which, such treasure was found; and

(*b*) as far as is possible the person by whom, and the circumstances under which, such treasure was hidden.

8. If, upon an enquiry made under section seven, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant, to establish his right.

Time to be allowed for suit by person claiming the treasure.

9. If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under section eight, no suit is instituted as aforesaid within such period to the knowledge of the Collector; or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected;

the Collector may declare the treasure to be ownerless.

When treasure may be declared ownerless.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue Authority.

Appeal against such declaration.

Subject to such appeal, every such declaration shall be final and conclusive.

10. When a declaration has been made in respect of any treasure under section nine, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

Proceedings subsequent to declaration.

11. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section five and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

When no other person claims as owner of place, treasure to be given to finder.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

When only one such person claims and his claim is not disputed, treasure to be divided.

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

Provided that the Collector may in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

(*a*) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or

(*b*) sell such treasure or any portion thereof by public auction and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed:

Provided also, that when the Collector has by his declaration under section nine rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section nine by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

and shares to be delivered to parties.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof, to which they are respectively entitled under such division.

In case of dispute as to ownership of place, proceedings to be stayed.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Settlement of such dispute,

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

and division thereupon.

15. If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section twelve, divide the treasure between him and the finder.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

Power to acquire the treasure on behalf of Government.

16. The Collector may, at any time after making a declaration under section nine, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemd to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Decision of Collector final, and no suit to lie against him for acts done *bona fide*.

17. No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for any thing done in good faith in exercise of the powers hereby conferred.

Collector to exercise powers of Civil Court.

18. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits.

Power to make rules.

19. The Local Government may, from time to time, make rules consistent with this Act, to regulate proceedings hereunder.

Such rules shall, on being published in the local Gazette, have the force of law.

Penalties.

20. If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security, required by section four, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on finder failing to give notice, &c.

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

21. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section twenty, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on owner abetting offence under section 20.

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

Schedule.

Number and date of enactments.	Title or subject.	Extent of repeal.
Bengal Regulation V of 1817...	A Regulation for declaring the rights of Government and of individuals with respect to hidden treasure, and for prescribing the rules to be observed on the discovery of such treasure.	The whole.
Madras Regulation XI of 1832..	A Regulation for declaring the rights of Government and of individuals with respect to hidden treasure, and for prescribing the rules to be observed on discovery of such treasure.	The whole.
Act XII of 1838 ...	Hidden Treasure (Madras) ...	The whole.
Act IV of 1872 ...	An Act for declaring which of certain rules, laws and regulations have the force of law in the Punjab, and for other purposes.	So far as regards Bengal Regulation V of 1817.
Act XV of 1874 ...	Laws Local Extent ...	The second schedule, so far as regards Madras Regulation XI of 1832 and Act XII of 1838.
		The fourth schedule, so far as regards Bengal Regulation V of 1817.
Act XVII of 1875 ...	An Act to consolidate and amend the law relating to the Courts in British Burma, and for other purposes.	So far as regards Bengal Regulation V of 1817.
Act XX of 1875 ...	An Act to declare and amend the law in force in the Central Provinces.	Do.
Act XVIII of 1876 ...	Oudh Laws Act ...	Do.

No. 8.

Para 3 of letter No. 3092-1665 dated the 17th November 1886 from the Assistant to the Resident in Mysore to the Dewan of Mysore.

3. I am also to point out that the "Rules regarding Treasure-trove" included by you under part VI were issued by the late Chief Commissioner of Mysore on his own authority without the sanction of the Government of India, and it

is very questionable whether they could have the force of law. The Resident therefore omitted these Rules from the list submitted to the Government of India containing the Rules in force in the Civil and Military Station, and in their place application was made for the extension of the Indian Treasure-trove Act (VI of 1878). Mr. Lyall will be obliged if you can show that the Rules under reference are legal; if not, I am to suggest that the introduction of the Treasure-trove Act may be proposed instead.

No. 9.

Para 3 *of letter No.* 30, *Camp Mysore, dated the* 15*th December* 1886, *from the Dewan of Mysore to the Resident in Mysore.*

3. The Rules regarding Treasure-trove do not seem to have had the sanction of the Government of India, but yet they have been in force and are being acted upon. Early steps will, however, be taken to introduce a Regulation on the subject.

No. 10.

Legislative Secretary's Memo, dated the 6*th August* 1889.

The Law in Mysore regarding Treasure-trove is contained in the Rules published under the late Chief Commissioner's Notification No. 6, dated the 17th April 1867.

These Rules were adopted from Regulation XI of 1832 of the Madras Code, which was repealed by Act VI of 1878 (the Indian Treasure-trove Act, 1878).

They were omitted from the schedule to the Instrument of Transfer, having been issued by the late Chief Commissioner without the sanction of the Government of India. They are however in force in Mysore.

2. The accompanying Draft Regulation has been prepared as directed, on the basis of Act No. VI of 1878, in supersession of the Rules referred to.

3. The opinions of the Members of His Highness the Maharaja's Council on the Draft Regulation are as follows :—

Mr. T. R. A. Thumboo Chettiar.

There is considerable difference between the Rules of 1867 and the proposed Draft.

Section 4 provides for notice being given to Deputy Commissioner by the finder of hidden treasure only in cases in which the value of the treasure exceeds in amount or value Rs. 10. I think the finder ought to be required to give notice of the discovery, in every case, to the Deputy Commissioner, who shall, upon production of the treasure, ascertain its value and if it does not extend Rs. 10 the treasure may be handed over to the finder.

In the absence of any agreement between the finder and owner of the land in which the treasure is found, the division after declaration under section 9 ought to be in equal shares, less the expenses incurred by the finder.

Up to one lac only the finder or owner ought to be allowed. The excess ought to go to Government as provided for in the Rules of 1867.

Mr. P. Chentsal Rao.

Under the proposed enactment, the finder gets *all* the treasure if it is found in a land of which there is no owner. Supposing a treasure is found in a jungle land, can the State be called the owner of such land? I think not. If so, is it right that the finder should get the whole without any share to Government? I think that the existing rules are more equitable and I see no reason why we should change them and pass the law.

*Section 4.—Is not the limit of 10 Rs. too low? Cannot we raise it to Rs. 100?

Notice to be given to Deputy Commissioner by finder of treasure only when it exceeds in amount or value 10 Rs.

*Section 12 para 2.—I do not see the justice of this rule. If treasure is found in my compound and I cannot prove that it was hidden by some one under whom I claim within 100 years, then the finder, though he may be a cooly, gets three-fourths. This is indeed hard. I would give three-fourths to the owner of the land and one-fourth to the finder; but if they be considered too much, let it be divided equally.

*In the absence of any agreement between the finder and the claimant as to the disposal of the treasure ¾ths to be allotted to the finder and ¼th to claimant.

I would add [after section 12 clause (*b*)]:

"Provided that when the Deputy Commissioner desires to sell any treasure, he shall take the orders of Government as to the time and place of such sale and as to the lots in which the treasure shall be put to sale."

No. 11.

Legislative Secretary's Note, dated the 22nd May 1891.

I beg to re-submit a draft Regulation on Treasure-trove with modifications made embodying the remarks made by yourself and Mr. Chentsal Rao Garu. I also enclose the existing Rules; I am afraid we have no law at present in force on the subject. The Rules introduced in 1867 do not appear to have received the sanction of the Governor-General.

Questions might arise in which the Government might claim a right to the Treasure: Rule 4 provided for it. I have embodied it in section 19 of the Draft Regulation.

Section 18 provides for all excess above one lac of Rupees becoming the property of Government in certain cases. Mr. Chentsal Rao Garu thinks that a minimum of Rs. 100 may be fixed instead of Rs. 10. I have left the figure unfilled in section 5.

Mr. Thumboo Chettiar's remarks thereon, dated 23rd May 1891.

Why was the provision in the old Madras Regulation XII of 1838 to the effect that, hidden treasure found, *if it does not exceed in value the sum of one lac of Rupees*, shall go to the finder and the excess over and above one lac belong to Government, omitted in Act VI of 1878?.

Legislative Secretary's Note in reply.

I have not been able to get the information required.

I enclose a Gazette copy of the Mover's Speech in introducing the Bill which became Act VI of 1878.

Perhaps the reason for the Government depriving itself of the excess over a lac of Rupees as under the old law, was to remove "every inducement to finders to conceal or make away with their discoveries" as stated in the statement of Objects and Reasons also enclosed.

In the Bill originally drafted by the Government of India, section 8 clause (*b*), the Government reserved to itself ¼th of the treasure amount or value when the discovery took place "in the process of executing some work (such as a road, a railway or a Canal) for the benefit of the public, &c. &c."

This provision does not appear in the Act. In my opinion this may also be embodied in our Draft Regulation, which I shall do if you approve.

Mr. Thumboo Chettiar's Note thereon, dated the 12*th June* 1891.

The question requires careful consideration. These important Legislative measures must I think be discussed personally and a Select Committee appointed to go through each Act section by section. If after these papers are seen by Mr. Chentsal Rao Garu the Legislative Secretary fixes a day we may meet and settle the Draft finally before the papers are sent to Dewan.

Mr. P. Chentsal Rao's Note, dated the 13*th June* 1891.

I have no objection to a day being fixed to discuss the matter.

Legislative Secretary's Note, dated the 9th April 1892.

I beg to submit the file about the Treasure-trove Draft Regulation for final orders.

The wording of sections 1 and 3 of the Draft Regulation has to be considered, as we have no Law or Rules having the force of Law at present. In effect this Regulation will be introducing *new* Legislation.

No. 12.

Legislative Secretary's Memo dated March 1893.

The Draft Treasure-trove Regulation was prepared on the lines of the British t VI of 1878, which repealed the Madras Regulation XI of 1832, from which ..ere adapted the Rules in force in Mysore now under the authority of the late Chief Commissioner's Notification No. 6, dated the 17th April 1867, without the sanction of the Government of India.

On the submission of the Draft Regulation to the Members of His Highness the Maharaja's Council in the first instance the following observations were made by them :—

With reference to section 4 of the Draft, Mr. Thumboo Chettiar observed that instead of the limit of Rs. 10 therein provided the finder of hidden treasure in every case ought to give notice of his find and where its amount or value is proved not to exceed Rs·10, it ought to be handed over to him. On the other hand Mr. Chentsal Rao Pantalu proposed to raise the said limit of Rs. 10 to Rs. 100.

Regarding para 2 of section 12, Mr. Thumboo Chettiar recommended an equal division of the treasure discovered, instead of $\frac{3}{4}$ths and $\frac{1}{4}$th, respectively, between the finder and the claimant, while Mr. Chentsal Rao Pantalu proposed the reverse of the provision made in the Draft, that is, $\frac{1}{4}$th to the finder and $\frac{3}{4}$ths to the owner or claimant, or an equal division between these two, if the latter was considered to get too much.

With regard to the disposal of the treasure subsequent to the declaration under section 9, Mr. Thumboo Chettiar recommended the adoption of the provision contained in para 6 of the current local rules of 1867, *viz.*, that the discovered treasure should, up to one lac of rupees of its value or amount, go to its finder or owner, and any excess above such one lac, to Government.

To clause (*b*) of the 2nd para of section 12, Mr. Chentsal Rao Pantalu proposed the addition of a proviso necessitating the issue of Government orders to the Deputy Commissioner regarding the particulars of the sale of the treasure.

No. 13.

Remarks of Councillors on the Draft Regulation.

I agree to this Draft.

T. R. A. T.

6—5—93.

Preamble.

Re "Expedient to provide a law"—There is no law at present. We may say "the existing rules."

P. C.

Section 5. Treasure to be handed over to finder if value is less than Rs. 100.
Suggested by Mr. T. R. A. Thumboo Chettiyar.
*(Mr. P. Chentsal Rao suggests 100 Rs.)

Re "If in the opinion of the Deputy Commissioner the amount or value of the treasure does not exceed * 100 rupees he shall hand it over to finder."

I agree to the limit of 100 rupees, but I would put it in section 4. If the party is to give notice, there is no object of the limit of 100 Rs.

P. C.
11—3—93.

Section 11. (former section 10).
Proceedings subsequent to declaration that the treasure is ownerless.

Re "provided it shall not exceed in amount or value the sum of one lac of rupees."

(NOTE.—This proviso is in our old rules of 1867. Rule 6.)

May be retained.

T. R. A. T.

P. C.
11—5—93.

Section 18. In the case of hidden treasure exceeding one lac and not being claimed under section 9, judgemnt to be given to the amount of one lac, the excess going to Government.

After the words "If the amount or value of the hidden treasure found at the same time, or in the same place, shall exceed one lac of rupees and no claim of right is preferred and established by any person or persons under section 9 of this Regulation for the treasure," *insert* "judgment shall be given according to section—to the amount of one lac of rupees and"

P. C.

Section 19. Procedure where Government possesses any claim to a hidden treasure (to be preferred by Amildar.)

This does not appear to be the proper place for this section.

P. C.

Mr. P. Chentsal Rao's Note, dated 11th May 1893.

Treasure-trove Bill.—I accept the principles of the Bill—but I am not satisfied that the order of sections is all right and the phraseology faultless—If the Legislative Secretary will go through it once and sends me a clean copy, I shall see it again.

Legislative Secretary's Note, dated 18th September 1893.

Clean copies of the Treasure-trove Draft Regulation submitted herewith.

No. 14.

Mr. V. N. Narasimiengar's Memo, dated 22nd September 1893.

On the 18th instant, a clean copy of the Draft Treasure-trove Regulation was submitted to the Hon'ble Mr. Chentsal Rao, as per his order of the 11th May 1893. He desired me to go through the draft, and submit my opinion on the arrangement of the sections, &c.

2. I have read the draft through, and am unable to suggest any improvements of the kind intimated.

3. At the same time, I beg leave to submit the following observations:—

(1) In section 6, it is provided that persons having a right to hidden treasure will forfeit the same if they do not appear according to notice within 6 months. Cases are not impossible in which a *bonâ fide* right cannot conveniently be urged within that time, and I think the interests of justice will be furthered by extending the limit.

(2) In section 7, it is said that the Deputy Commissioner shall cause the treasure to be produced before him. This cannot be done in cases in which the bulk or quantity of the articles constituting the treasure is not portable. It seems desirable to provide for a symbolical rather than a literal production.

(3) In section 5, it seems to me to be advisable to provide for the inquiry being held by any officer to whom the Deputy Commissioner may refer it. In section 3, Deputy Commissioner includes any officer appointed by Government to perform the functions of that functionary under the Regulation; but cases will arise in which the District officer may find it necessary to refer a case of the kind to an Assistant, although not appointed by Government as in section 3.

(4) I feel inclined to recommend an appeal to Government against the Deputy Commissioner's declaration under section 16. As a rule, articles of a historical or archæological value will be acquired under the section, but provision should in my opinion be made for a remedy against the undue exercise of the power conferred on the District officer.

(5) In section 17, the word "be" seems to be a misprint for "lie." *Vide* the Indian Act.

4. The file will be resubmitted to the Hon'ble Mr. Chentsal Rao with this Memorandum.

No. 15.

Mr. Chentsal Rao's remarks thereon, dated 22nd September 1893.

You have not printed the draft as altered by Mr. Thumboo Chettiar in the Draft marked A. It is in that Draft, I thought the arrangement was faulty. Please print as altered by Mr. Thumboo Chettiar and send it me with your suggestions written on the margin in the appropriate places. Please send me 2 or 3 copies.—I shall then go through it and offer my suggestions.

No. 16.

Alterations made under Mr. Chentsal Rao's Orders in the Draft Regulation.

Section 6. Notification requiring claimants to appear (within 6 months after the date of the publication of such Notification).

In section 1 after the words "come into force" *insert* "at once."

In section 2 for the words "shall be repealed" *substitute* "are hereby repealed."

Mr. Narsimiengar's suggestion—A maximum of 6 months is not enough, in my humble opinion. 12 would be fairer.

Mr. Chentsal Rao's remarks.—6 enough.

Section 8. Matters to be enquired into and determined by the Deputy Commissioner. (Production of the treasure before him).

Mr. Narsimiengar's suggestion.—The treasure may be too heavy or not portable for production. If we add the words "or before any local Officer named by him," the difficulty would be removed.

Mr. Chentsal Rao's remarks.—Not necessary.

Section 11. Proceedings subsequent to declaration (that the treasure is ownerless).

Mr. Chentsal Rao's remarks.—*Insert* the words "be disposed of" after "such treasure shall," and after the words "in accordance with the provisions hereinafter contained." *Omit* the words "either be delivered ..... to the end of the section.

Section 12. When no other person claims as owner of place, treasure to be given to finder.

Mr. Chentsal Rao's remarks.—Is this right?

Should not the owner of the ground get anything?

[New proviso inserted by Mr. Narasimiengar in substitution for that in section 12 of the Draft Regulation.]

(i) Provided that if the treasure was discovered in any land belonging to an individual other than the finder, the Deputy Commissioner shall divide the treasure in equal shares between the said finder and owner of land.

(ii) Provided also that if the treasure discovered exceed in amount or value the sum of Rupees one lakh, the Deputy Commissioner shall allot to the finder and owner of land, so much of the treasure as will amount to one lakh of Rupees, in the proportions prescribed in proviso (i), and carry the residue to the credit of Government.

Section 13. When only one such person claims and his claim is not disputed, treasure to be divided.

In para 2 after the words "one-half of the treasure," *insert* the words "whatever may be the amount or value thereof"

Section 16. Division upon (settlement of dispute as to ownership of place).

In para 2 after the word "finder" at the end, *add* a proviso as follows :—"provided the treasure does not exceed in amount or value the sum of one lac of rupees."

Section 17. Power to acquire treasure on behalf of Government. (Deputy Commissioner to declare in writing his intention so to acquire.)

Mr. Narsimiengar's suggestion.—In my opinion, the declaration of the Deputy Commissioner should not be made final, but an appeal should be allowed against it to Government.

Mr. Centsal Rao's remarks.—Not necessary. We can issue an executive order not to make such declaration without Government sanction.

Section 18. In the case of hidden treasure exceeding one lac and not being claimed under section 9, judgment to be given to the amount of one lac, the excess going to Government.

After the words "judgment shall be given" and before the words "according to section 10" *insert* "in favor of the finder."

Section 19. Procedure where Government possesses any claim to a hidden treasure—Deputy Commissioner to divide the treasure equally between finder and Government, when the latter's claim thereto is established during the enquiry held by him.

For the clause "he shall adjudge.... to the end of the section, *substitute* "he shall divide the treasure between the finder and Government equally."

The principle of the proposed Regulation is that where a claim of ownership is established, the finder is to get half and the owner half, whatever be the amount whether one lac or more. If no ownership is established, the finder is to get one lac only, the excess being resumed by Government. Please see whether the alterations I have made fully carry out the intention. If they do, please get the Draft re-printed as altered.

No. 17.

Dewan's remarks dated 31-7-95 *on draft Official Memorandum No. Pet*-162 *dated* 16*th July* 1895, *in re petition of appeal No.* 133 *dated* 8*th July* 1895, *from Subbannia of Kasarvalli, Tirthahalli taluk, against the order of the Deputy Commissioner, Shimoga District, regarding certain coins found in the temple of Subramania Devaru.*

The appeal lies to the "Superintendent." His place as regards judicial matters is now taken by the District Judge and as regards other matters by the Government. I think the District Judge should decide the appeal and a second appeal allowed to the Chief Court in lieu of one to the "Judicial Commissioner."

Circulate to Councillors and bring up at next meeting.

Mr. Krishna Murti's remarks thereon dated the 9*th August* 1895.

I think our temple rules are sufficient for our purposes and the amendments proposed by the Dewan are all that are wanted.

No. 18.

Legislative Secretary's Memo dated the 7*th September* 1895 *with the re-draft.*

As suggested in the Council meeting, the original Treasure-trove Rules have been altered so as to suit the present circumstances of Mysore. No alterations

of principle have been introduced and the only changes made are either verbal or involving questions of procedure. Instead of a summary enquiry by a Deputy Superintendent and two appeals to the Superintendent and the Judicial Commissioner, the revised rules provide for a formal enquiry by the Deputy Commissioner and an appeal to the Chief Court.

Mr. Thumboo Chettiar's remarks thereon, dated the 11th September 1895.

Cannot the British Enactment be introduced into Mysore with suitable amendments ? The Under-Secretary will please see me with this file.

No. 19.

General and Revenue Secretary's remarks dated the 1st August 1896 *on another petition of appeal No.* 331 *dated the 10th July* 1896 *from the Tumkur District.*

* * * * *

The question of altering the wording of the Rules was then (when dealing with the aforementioned Shimoga appeal case) under consideration. Please find out what became of it.

Mr. B. Ramaswami Iyengar's Note dated the 12th August 1896.

* * * * *

The minutes of the Dewan and the Councillors regarding amendment of sections 8 and 9 are in this file. No final order or notification seems to have been issued as regards the amendments proposed.

Draft of a Notification prepared by the General and Revenue Secretary on the 20th August 1896 *as per the Dewan's order. (Not issued).*

Government are pleased to direct that the functions of "Deputy Superintendent," "Superintendent" and "Judicial Commissioner" under Notification No. 6, dated 17th April 1867, be exercised respectively by "the Deputy Commissioner," "the District Judge," and "the Chief Judge or one of the Judges of the Chief Court."

File No. 19 of 1906-07.

Notification No. J. 2709, dated 6th March 1907.

Serial No. 1

1 The accompanying draft of a Regulation relating to Treasure-Trove in Mysore together with a statement of objects and reasons therefor is published for general information.

2. The Draft Regulation will be taken up for consideration at the end of three months from the date of its publication in the Gazette. All suggestions and criticisms received on the subject during this period will be duly considered.

By Order,

K. S. CHANDRASEKHARA AIYAR,
Secretary.

The Compiler, *Mysore Gazette*, for publication in three successive issues of Part III and for supply of 50 copies to the General and Revenue Secretariat.

Draft Regulation No. of 19

A Bill to provide a law relating to Treasure-Trove.

Preamble. Whereas it is expedient to provide a law relating to Treasure-Trove in Mysore; His Highness the Maharaja is pleased to enact as follows:—

PRELIMINARY.

Short title. 1. This Regulation may be called "The Mysore Treasure-Trove Regulation 19

Extent. It extends to the whole of Mysore;

Commencement. And it shall come into force on the date of the passing thereof.

Repeal of enactments. 2. The Rules for the disposal of Treasure-Trove published under the late Mysore Chief Commissioner's Notification No. 6 dated, the 17th April 1867, are hereby repealed.

Section 3 of Act VI of 1878.

"Treasure."

"Deputy Commissioner."

Interpretation clause. 3. In this Regulation, "Treasure" means anything of any value hidden in the soil, or in anything affixed thereto:

"Deputy Commissioner" means (1) any Revenue officer in independent charge of a district and (2) any officer appointed by Government to perform the functions of a Deputy Commissioner under this Regulation.

"Owner."

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing he shall for the purposes of this Regulation, be deemed to be the owner of such land or thing.

PROCEDURE ON FINDING TREASURE.

Section 4 of Act VI of 1878.)

Notice by finder of treasure. 4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Deputy Commissioner notice in writing—

(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found; and

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Deputy Commissioner such security as the Deputy Commissioner thinks fit, to produce the treasure at such time and place as he may from time to time require.

Section 5 of Act VI of 1878.

Notification requiring claimants to appear.

5. On receiving a notice under Section 4, the Deputy Commissioner shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely) :—

(*a*) he shall publish a notification in such manner as the Government from time to time prescribes in this behalf, to the effect that, on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure or any part thereof to appear personally or by agent before the Deputy Commissioner on a day and at a place therein mentioned, such day not being earlier than four months or later than six months after the date of the publication of such notification;

(*b*) When the place in which the treasure appears to the Deputy Commissioner to have been found was at the date of the finding in the possession of some person other than the finder, the Deputy Commissioner shall also serve on such person a special notice in writing to the same effect.

Section 6 of Act VI of 1878.

Forfeiture of right on failure to appear.

6. Any person having any right to such treasure or any part thereof as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under Section 5, shall forfeit such right.

Section 7 of Act VI of 1878.

Matters to be enquired into and determined by the Deputy Commissioner.

7. On the day notified under Section 5, the Deputy Commissioner shall cause the treasure to be produced before him, and shall enquire as to and determine :—

(*a*) the person by whom, the place in which and the circumstances under which, such treasure was found; and

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Section 8 of Act VI of 1878.

Time to be allowed for suit by person claiming the treasure.

8. If upon an enquiry made under Section 7, the Deputy Commissioner sees reason to believe that the treasure was hidden within one hundred years before the date of the finding by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Deputy Commissioner shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

Section 9 of Act VI of 1878.

When treasure may be declared ownerless.

9. If upon such enquiry the Deputy Commissioner sees no reason to believe that the treasure was so hidden ; or

if, where a period is fixed under Section 8, no suit is instituted as aforesaid within such period to the knowledge of the Deputy Commissioner ; or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected;

the Deputy Commissioner may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Government ;

Subject to such appeal, every such declaration shall be final and conclusive.

Section 10 of Act VI of 1878.

Proceedings subsequent to declaration.

10. When a declaration has been made in respect of any treasure under Section 9, such treasure shall be disposed of in accordance with the provisions hereinafter contained.

Section 11 of Act VI of 1878 (Slightly modified).

When no other person claims as owner of place, treasure to be given to finder.

11. When a declaration has been made as aforesaid in respect of any treasure and no person other than the finder of such treasure has appeared as required by the Notification published under Section 5 and claimed a share as owner of the place in which it has been found, the Deputy Commissioner shall, subject to the provisions of Section 16, deliver such treasure to the finder thereof.

Section 12 of Act VI of 1878.

When only one such person claims, and his claim is not disputed treasure to be divided.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed and the claim of such person is not disputed by the finder, the Deputy Commissioner shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, one-half of the treasure shall be allotted to such finder and the other half to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

Provided that the Deputy Commissioner may in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

(*a*) allot to either party the whole or more than his share of such treasure on such party paying to the Deputy Commissioner for the other party such sum of money as the Deputy Commissioner may fix as the equivalent of the share of such other party or of the excess so allotted, as the case may be; or

(*b*) with the sanction of Government and subject to its instructions, if any, sell such treasure or any portion thereof by public auction and divide the sale proceeds between the parties according to the rule hereinbefore prescribed:

Provided also that when the Deputy Commissioner has by his declaration under Section 9 rejected any claim made under this Regulation by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under Section 9 by the person whose claim has been so rejected or, when an appeal has been so presented, after such appeal has been dismissed.

And shares to be delivered to parties.

When the Deputy Commissioner has made a division under this section, he shall deliver to the parties the portions of such treasure or the money in lieu thereof, to which they are respectively entitled under such division.

Section 13 of Act VI of 1878.

In case of dispute as to ownership of place, proceedings to be stayed.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as

owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Deputy Commissioner shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Section 14 of Act VI of 1878.

Settlement of such dispute.

14. Any person who has so appeared and claimed may within one month from the date of such order institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Deputy Commissioner shall be made defendants.

And division thereupon.

15. (1) If any such suit is instituted and the plaintiff's claim is finally established therein, the Deputy Commissioner shall, subject to the provisions of Section 12, divide the treasure between him and the finder.

(2) If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Deputy Commissioner shall deliver the treasure, subject to the provisions of Section 16, to the finder.

Section 6 of the Treasure-Trove Rules of 1867, modified.

If value of treasure exceeds one lakh finder to get one lakh, the excess going to Government in specified cases.

16. If, in the case referred to in Section 11 or in Sub-section (2) of Section 15, the amount or value of the treasure found exceeds one lakh of rupees, the Deputy Commissioner shall deliver so much of the treasure as is of the amount or value of one lakh of rupees to the finder and shall declare the excess to be at the disposal of Government.

Section 16 of Act VI of 1878.

Power to acquire the treasure on behalf of Government.

17. The Deputy Commissioner may at any time after making a declaration under Section 9 and before delivering or dividing the treasure as hereinbefore provided declare by writing under his hand his intention to acquire on behalf of the Government the treasure or any specified portion thereof by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons, and thereupon such treasure or portion shall be deemed to be the property of Government and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Section 17 of Act VI of 1878.

Decision of Deputy Commissioner final and no suit to lie against him for acts done *bona fide*.

18. No decision passed or act done by the Deputy Commissioner under this Regulation shall be called in question by any Civil Court and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Section 18 of Act VI of 1878.

Deputy Commissioner to exercise powers of Civil Court.

19. A Deputy Commissioner making any enquiry under this Regulation may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits.

Section 19 of Act VI of 1878. (slightly modified.)

Power to make rules.

20. The Government may, from time to time, make Rules consistent with this Regulation to regulate proceedings hereunder and, generally, all matters not provided for herein. Such Rules shall, on being published in the official Gazette, have the force of law.

PENALTIES.

Section 20 of Act VI of 1878.

Penalty on finder failing to give notice, etc.

21. If the finder of any treasure fails to give the notice or does not either make the deposit or give the security required by Section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure or the money in lieu thereof to which he would otherwise be entitled shall vest in the Government; and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year or with fine or with both.

Section 21 of Act VI of 1878.

Penalty on owner abetting offence under Section 21.

22. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under Section 21, the share of such treasure or the money in lieu thereof to which he would otherwise be entitled shall vest in the Government; and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months or with fine or with both.

THE DRAFT MYSORE TREASURE-TROVE REGULATION.

Statement of Objects and Reasons.

Published at page 119 of the *Mysore Gazette*, dated 4th May 1907.

The law in force in Mysore regarding Treasure-Trove is contained in the Rules published under the late Chief Commissioner's Notification No. 6, dated the 17th April 1867 These rules were adopted from Regulation XI of 1832, of the Madras Code, but, having been published by the late Chief Commissioner without sanction of the Government of India, it is a question how far they can be regarded as valid. Moreover, they have become unworkable in practice, and unsuited to present requirements in certain respects. Hence the necessity for the present Regulation.

2. The draft Regulation is based on the Indian Treasure-Trove Act (Act VI of 1878) but it makes certain departures therefrom.

3. The object of the Regulation is to define the rights in Treasure-Trove of the finders thereof and the other parties interested. The Regulation requires intimation to be given of the finding of the treasure and secures the right of all persons who can establish an antecedent property in it. This antecedent right can be established only in cases where there is presumptive evidence that the treasure was hidden within one hundred years. If such right cannot be established, the Regulation proceeds to determine the respective rights of the finder and the owner of the soil where the treasure was found. All claims to the treasure and all disputes as to the ownership of the land are to be referred to the Civil Court. Where the treasure exceeds one lakh of rupees in amount or value, and when no person other than the finder has established his right to a share, the finder is to get one lakh, the excess going to Government. The Government has also power to retain the treasure on payment of one-fifth in excess of its intrinsic value.

4. The Draft Regulation lays down the following procedure for observance :—

(*a*) The finder shall give notice of the finding to the Deputy Commissioner.

(*b*) Notice shall be given by Deputy Commissioner to the owner or owners of land where the treasure was found.

(*c*) the discovery of the treasure shall be advertised and all claimants desired to come forward within six months.

(*d*) Claims to the treasure or to a share in it shall be enquired into.

5. The Draft Regulation differs from Act VI of 1878 in the following particulars:—

(*a*) The right of Government to the excess beyond one lakh when no person other than the finder has established his right to a share (Section 17). This is taken from the Chief Commissioner's Rules, though, there is no similar provision in the Indian Act.

(*b*) As between the owner and the finder, the Indian Act allots three-fourths to the finder and one fourth to the owner. An equal division between the two is considered more equitable and the Regulation provides for this accordingly (Section 12).

(*c*) When the Deputy Commissioner proceeds to sell the treasure under Section 12, he is required to take the orders of Government as to the particulars of sale.

(*d*) Power is reserved to Government to make rules on matters incidental to Treasure-Trove not provided for in the Regulation.

S. P. RAJAGOPALACHARI,
Probationary Assistant Commissioner.

Letter, Pol. No. 831, dated the 30th March 1910, from the Secretary to Gorernment, General and Revenue Departments, to the First Assistant to the Honor'ble the Resident in Mysore.

Serial No. 2.

"I am directed to forward herewith a copy of a Bill relating to Treasure-Trove in Mysore.

2. The Bill as originally introduced into the Council followed closely the B. I. Act VI of 1878, except in two important particulars. In the B. I. Act, the finder of the treasure, is entitled to ¾ths of the treasure, while the owner of the place gets the remaining ¼th. The Bill makes an equal division of the treasure between the two. Again, in the B. I. Act, there is no absolute limit fixed as regards the amount of the treasure which the finder may get for his share. But in the Bill the finder's share is limited to one lakh of rupees, the excess, if any, going to the Government.

3. These two provisions are taken from the Rules on Treasure-Trove issued by the Chief Commissioner of Mysore in Notification No. 6, dated 17th April 1867, (copy enclosed) which forms the existing law on the subject in the State. It will, therefore, be seen that though the Bill did not follow the B. I. Act in these particulars, it introduced no innovation into the existing law in Mysore.

4. When the Bill was referred by the Council to a Select Committee, that body recommended several changes in the Bill which have since been duly considered by the Council at its meeting held on 2nd September 1909. The most important change recommended by the Select Committee has reference to the claim of the owner of the treasure. In the B. I. Act as well as in the Bill as introduced into the Council, antecedent rights of property in the treasure were protected only if the owner could prove that it was hidden by him or by those through whom he claimed within a hundred years prior to its discovery. If he could not prove this, his right to the treasure was forfeited. Cases are, however, conceivable where owners of the treasure may establish their *right* to it without at the same time being able to prove to the satisfaction of a Civil Court that it was hidden *within the particular period of time* fixed by the Bill. The Durbar consider it rather hard that this class of persons should be refused any kind of consideration and are therefore of opinion that they should be placed, at least, on the same footing as the owners of the place where the treasure is found. With this view, the words "or otherwise" have been inserted in clause 11, proviso to clause 12 (*b*) and clause 13 on the analogy of clause 6. The effect of this change will be to allow this class of

persons to prefer their claims to the treasure before the Deputy Commissioner, after it has been declared ownerless under clause 9. An amendment consequential to the above has been made in para 2, clause of 12.

5. The next important change made in the Bill is to be found in clause 8. In the B. I. Act, there is no provision to compensate or reward the finder of the treasure, if the owner of it establishes his right under Section 8. But the provision made in this matter in Rule 4 of the Chief Commissioner's Rules appears to the Durbar to be more reasonable. A proviso has therefore been added to clause 8 empowering the Civil Courts to compensate the finder in a reasonable amount not exceeding ¼th the value of the treasure in case the owner establishes his right under Section 8.

6. In clause 6 of the Bill it is provided that persons having a right to hidden treasure shall forfeit their right to it, if they fail to appear before the Deputy Commissioner within the period fixed under clause 5. The Durbar are of opinion that this is likely to work hardship in the case of persons who may be absent from their ordinary place of residence for long periods or who may be sojourning in distant places or who may from other valid causes be unable to appear in answer to the notice. An absolute extinction of right cannot be intended in cases where non-appearance is unavoidable. An intention to reopen the enquiry before the Deputy Commissioner in such cases is presumable from clause 19 (Section 18 of the B. I. Act). But to place the matter beyond all doubt provision has been made in this clause for a re-hearing by making Chapter VII of the Civil Procedure Code, 1882, applicable to these cases.

7. A few minor changes have also been introduced into the Bill.

8. An additional para has been added to the interpretation of the word "owner" so as to make explicit the right of the Government to the treasure found in land belonging to it.

9. The word "finder" has not been defined in the B. I. Act, apparently because the notion underlying that word was considered too elementary to require a definition. But questions of some difficulty may arise as to who is to be considered the finder in a particular set of circumstances. It is not possible to attempt a definition of the word that would cover all cases, but a class of cases which may frequently occur may, in the opinion of the Durbar, be expressly provided for. With this object an interpretation of the word has been added to clause 3.

10. The only remaining change that has to be noticed is to be found in clause 5 (*b*). This, as it originally stood, provided for the issue of the notice of enquiry by the Deputy Commissioner only to the person in possession. It is considered desirable to provide for a like notice being issued to the owner of the land also, as he may not always be in possession.

11. I am now to request you to be so good as to obtain the sanction of the Government of India for the Bill as now forwarded being passed into law."

The Treasure-Trove Bill.

*The portions in italics excepting in clause 5 (*a*) are those added by the Select Committee and those in square bracket proposed for omission.

(*As amended by the Select Committee and approved by the Legislative Council*).

A Bill to provide a law relating to Treasure-Trove.

Whereas it is expedient to provide a law relating to Treasure-Trove in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Preamble.

PRELIMINARY.

1. This Regulation may be called "The Mysore Treasure-Trove Regulation, 191

Short title.

It extends to the whole of Mysore;

Extent.

And it shall come into force on the date of the passing thereof.

Commencement.

2. The rules for the disposal of Treasure-Trove published under the late Mysore Chief Commissioner's Notification No. 6, dated the 17th April 1867, are hereby repealed.

Repeal of enactments.

Section 3 of Act VI of 1878.

"Treasure."

"Deputy Commissioner."

3. In this Regulation, "treasure" means anything of any value hidden in the soil, or in any thing affixed thereto; "Deputy Commissioner" means (1) any Revenue Officer in independent charge of a district and (2) any officer appointed by Government to perform the functions of a Deputy Commissioner under this Regulation.

Interpretation clause.

"Finder."

When any treasure is discovered in the course of any work done at the express or implied direction of any person, such person shall be deemed to be the finder.

"Owner."

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Regulation, be deemed to be the owner of such land or thing.

Where any land is the property of Government under Section 36 of the Land Revenue Code, 1888, the Government shall, for the purposes of this Regulation, be deemed to be the owner of the land or thing affixed thereto.

PROCEDURE ON FINDING TREASURE.

Section 4 of Act VI of 1878.

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Deputy Commissioner notice in writing—

Notice by finder of treasure.

(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found; and

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Deputy Commissioner such security as the Deputy Commissioner thinks fit, to produce the treasure at such time and place as he may from time to time require.

Section 5 of Act VI of 1878.

5. On receiving a notice under Section 4, the Deputy Commissioner shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely) :—

Notification requiring claimants to appear.

(*a*) He shall publish a notification in such manner as the Government from time to time prescribes in this behalf, to the effect that, on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof to appear personally or by agent before the Deputy Commissioner on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(*b*) When the place in which the treasure appears to the Deputy Commissioner to have been found was, at the date of the finding, in the possession of, *or belonged to*, some person other than the finder, the Deputy Commissioner shall also serve on such person a special notice in writing to the same effect.

Section 6 of Act VI of 1878.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under Section 5, shall forfeit such right.

Forfeiture of right on failure to appear.

Section 7 of Act VI of 1878.

Matters to be enquired into and determined by the Deputy Commissioner.

On the day notified under Section 5, the Deputy Commissioner shall cause the treasure to be produced before him and shall enquire as to and determine:—

(*a*) the person by whom, the place in which, and the circumstances under which, such treasure was found; and

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Section 8 of Act VI of 1878.

Time to be allowed for suit by person claiming the treasure.

8. If upon an enquiry made under Section 7, the Deputy Commissioner sees reason to believe that the treasure was hidden within one hundred years before the date of the finding by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Deputy Commissioner shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

* Added by the Legislative Council.

Provided that in the event of the claimant succeeding in his suit it shall be competent to the Civil Court to award the finder a reward not exceeding one-fourth the value of the treasure.

Section 9 of Act VI of 1878.

When treasure may be declared ownerless.

9. If, upon such enquiry, the Deputy Commissioner sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under Section 8, no suit is instituted as aforesaid within such period to the knowledge of the Deputy Commissioner; or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected;

the Deputy Commissioner may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Government;

subject to such appeal, every such declaration shall be final and conclusive.

Section 10 of Act VI of 1878.

Proceedings subsequent to declaration.

10. When a declaration has been made in respect of any treasure under Section 9, such treasure shall be disposed of in accordance with the provisions hereinafter contained.

Section 11 of Act VI of 1878.
(Slightly modified.)

When no other person claims as owner of place, treasure to be given to finder.

11. When a declaration has been made as aforesaid in respect of any treasure, and no person other than the finder of such treasure has appeared, as required by the notification published under Section 5 and claimed a share as owner of the place in which it has been found *or otherwise* the Deputy Commissioner shall, subject to the provisions of Section 16, deliver such treasure to the finder thereof.

Section 12 of Act VI of 1878.

When only one such person claims, and his claim is not disputed, treasure to be divided.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed and the claim of such person is not disputed by the finder, the

Deputy Commissioner shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, one half of the treasure *not exceeding a lakh of rupees in amount or value* shall be allotted to such finder and the [other half] *remainder* to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

Provided that the Deputy Commissioner may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

(*a*) allot to either party the whole or more than his share of such treasure on such party paying to the Deputy Commissioner for the other party such sum of money as the Deputy Commissioner may fix as the equivalent of the share of such other party or of the excess so allotted, as the case may be; or

(*b*) with the sanction of Government, and subject to its instructions, if any, sell such treasure or any portion thereof by public auction and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed:

Provided also that when the Deputy Commissioner has, by his declaration under Section 9, rejected any claim made under this Regulation by any person other than the said finder or person claiming as owner of the place in which the treasure was found *or otherwise* such division shall not be made until after the expiration of two months without an appeal having been presented under Section 9 by the person whose claim has been so rejected or, when an appeal has been so presented, after such appeal has been dismissed.

And shares to be delivered to parties.

When the Deputy Commissioner has made a division under this section, he shall deliver to the parties the portions of such treasure or the money in lieu thereof, to which they are respectively entitled under such division.

Section 13 of Act VI of 1878.

In case of dispute as to ownership of place, proceedings to be stayed.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found *or otherwise*, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Deputy Commissioner shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Section 14 of Act VI of 1878.

Settlement of such dispute.

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit, the finder of the treasure and all persons disputing such claim before the Deputy Commissioner shall be made defendants.

And division thereupon.

15. (1) If any such suit is instituted and the plaintiff's claim is finally established therein, the Deputy Commissioner shall, subject to the provisions of Section 12, divide the treasure between him and the finder.

(2) If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Deputy Commissioner shall deliver the treasure, subject to the provisions of Section 16, to the finder.

Section 6 of the Treasure-Trove Rules of 1867, modified.

If value of treasure exceeds one lakh, finder to get one lakh, the excess going to Government in specified cases.

16. If, in the case referred to in Section 11 or in Sub-section (2) of Section 15, the amount or value of the treasure found exceeds one lakh of rupees, the Deputy Commissioner shall deliver so much of the treasure as is of the amount or value of one lakh of rupees to the finder and shall declare the excess to be at the disposal of Government.

Section 16 of Act VI of 1878.

Power to acquire the treasure on behalf of Government.

17. The Deputy Commissioner may, at any time after making a declaration under Section 9 and before delivering or dividing the treasure as hereinbefore provided, declare, by writing under his hand, his intention to acquire on behalf of the Government the treasure or any specified portion thereof by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons, and thereupon such treasury or portion shall be deemed to be the property of Government and the money so deposited shall be dealt with as far as may be, as if it were such treasure or portion.

Section 17 of Act VI of 1878.

Decision of Deputy Commissioner final and no suit to lie against him for acts done *bona fide*.

18. No decision passed or act done by the Deputy Commissioner under this Regulation shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Section 18 of Act VI of 1878.

Deputy Commissioner to exercise powers of Civil Court.

19. A Deputy Commissioner making any enquiry under this Regulation, may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits; *and the provisions of Chapter VII of the Code of Civil Procedure shall, so far as may be, apply to proceedings under this Regulation.*

Section 19 of Act VI of 1878.
(Slightly modified.)

Power to make rules.

20. The Government may, from time to time, make rules, consistent with this Regulation, to regulate proceedings hereunder and, generally, all matters not provided for herein. Such rules shall, on being published in the Official Gazette, have the force of law.

PENALTIES.

Section 20 of Act VI of 1878.

Penalty on finder failing to give notice, etc.

21. If the finder of any treasure fails to give the notice or does not either make the deposit or give the security required by Section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure or the money in lieu thereof to which he would otherwise be entitled shall vest in the Government and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year or with fine or with both.

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Penalty on owner abetting offence under Section 21.

22. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under Section 21, the share of such treasure or the money in

lieu thereof to which he would otherwise be entitled shall vest in the Government, and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months or with fine or with both.

Letter No. 2650, dated Bangalore, 29th April 1910, from Major W. G. GREY, I. A., First Assistant to the Resident in Mysore, to the Dewan of Mysore.

Serial No. 3.

I am directed to acknowledge the receipt of Mr. Balasundaram Iyer's letter No. 831—Pol., dated the 30th March 1910, forwarding a copy of the revised Bill relating to Treasure-Trove in Mysore, and, in reply to state that there is no objection to the Bill being passed into law in the Mysore State.

2. I am to request that 9 copies of the Bill as passed into law may kindly be forwarded to this Residency for information.

No. J. 823—Legis. 19-06-4, dated 14th September 1910, to the Compiler, Mysore Gazette.

Serial No. 4.

Ordered that the accompanying Regulation No. III of 1910, a Regulation to provide a law relating to Treasure-Trove in Mysore, which received the assent of His Highness the Maharaja on the 6th day of September 1910, be published for general information.

REGULATION No. III OF 1910.

(Received the Assent of His Highness the Maharaja on the 6th day of September 1910.)

A Regulation to provide a law relating to Treasure-Trove.

Preamble.

Whereas it is expedient to provide a law relating to Treasure-Trove in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Preliminary.

Short title.

1. This Regulation may be called "The Mysore Treasure-Trove Regulation, 1910."

Extent.

It extends to the whole of Mysore.

Commencement.

And it shall come into force on the date of the passing thereof.

Repeal of enactments.

2. The rules for the disposal of Treasure-Trove published under the late Mysore Chief Commissioner's Notification No. 6, dated the 17th April 1867, are hereby repealed.

Interpretation clause.

3. In this Regulation,

"Treasure."

"Treasure" means anything of any value hidden in the soil, or in anything affixed thereto;

"Deputy Commissioner."

"Deputy Commissioner" means (1) any Revenue Officer in independent charge of a district and (2) any officer appointed by Government to perform the functions of a Deputy Commissioner under this Regulation.

"Finder.

When any treasure is discovered in the course of any work done at the express or implied direction of any person, such person shall be deemed to be the finder.

"Owner."

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Regulation, be deemed to be the owner of such land or thing.

Where any land is the property of Government under section 36 of the Land Revenue Code, 1888, the Government shall, for the purposes of this Regulation, be deemed to be the owner of the land or thing affixed thereto.

Procedure on finding treasure.

Notice by finder of treasure.

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Deputy Commissioner notice in writing—

(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found; and

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Deputy Commissioner such security as the Deputy Commissioner thinks fit, to produce the treasure at such time and place as he may from time to time require.

Notification requiring claimants to appear.

5. On receiving a notice under section 4, the Deputy Commissioner shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely) :—

(*a*) He shall publish a notification in such manner as the Government from time to time prescribes in this behalf, to the effect that, on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*) ; and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Deputy Commissioner on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months after the date of the publication of such notification ;

(*b*) When the place in which the treasure appears to the Deputy Commissioner to have been found was, at the date of the finding, in the possession of, or belonged to, some person other than the finder, the Deputy Commissioner shall also serve on such person a special notice in writing to the same effect.

Forfeiture of right on failure to appear.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Matters to be enquired into and determined by the Deputy Commissioner.

7. On the day notified under section 5, the Deputy Commissioner shall cause the treasure to be produced before him and shall enquire as to and determine—

(*a*) the person by whom, the place in which, and the circumstances under which, such treasure was found ; and

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Time to be allowed for suit by person claiming the treasure.

8. If upon an enquiry made under section 7, the Deputy Commissioner sees reason to believe that the treasure was hidden within one hundred years before the date of the finding by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Deputy Commissioner shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

Provided that in the event of the claimant succeeding in his suit, it shall be competent to the Civil Court to award the finder a reward not exceeding one-fourth the value of the treasure.

When treasure may be declared ownerless.

9. If, upon such enquiry, the Deputy Commissioner sees no reason to believe that the treasure was so hidden ; or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Deputy Commissioner ; or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected ;

the Deputy Commissioner may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Government ;

subject to such appeal, every such declaration shall be final and conclusive.

Proceedings subsequent to declaration.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall be disposed of in accordance with the provisions hereinafter contained.

When no other person claims as owner of place, treasure to be given to finder.

11 When a declaration has been made as aforesaid in respect of any treasure and no person other than the finder of such treasure has appeared, as required by the notification published under section 5, and claimed a share as owner of the place in which it has been found or otherwise, the Deputy Commissioner shall, subject to the provisions of section 16, deliver such treasure to the finder thereof.

When only one such person claims, and his claim is not disputed, treasure to be divided.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed and the claim of such person is not disputed by the finder, the Deputy Commissioner shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely) :—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, one-half of the treasure not exceeding a lakh of rupees in amount or value shall be allotted to such finder and the remainder to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith :

Provided that the Deputy Commissioner may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

(*a*) allot to either party the whole or more than his share of such treasure on such party paying to the Deputy Commissioner for the other party such sum of money as the Deputy Commissioner may fix as the equivalent of the share of such other party or of the excess so allotted, as the case may be ; or

(*b*) with the sanction of Government, and subject to its instructions, if any, sell such treasure or any portion thereof by public auction and divide the sale proceeds between the parties according to the rule hereinbefore prescribed :

Provided also that when the Deputy Commissioner has, by his declaration under section 9, rejected any claim made under this Regulation by any person other than the said finder or person claiming as owner of the place in which the treasure was found or otherwise such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected or, when an appeal has been so presented, after such appeal has been dismissed.

When the Deputy Commissioner has made a division under this section, he shall deliver to the parties the portions of such treasure or the money in lieu thereof, to which they are respectively entitled under such division.

And shares to be delivered to parties.

In case of dispute as to ownership of place, proceedings to be stayed.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found or otherwise, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Deputy Commissioner shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Settlement of such dispute.

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right ; and in every such suit, the finder of the treasure and all persons disputing such claim before the Deputy Commissioner shall be made defendants.

And division thereupon.

15. (1) If any such suit is instituted and the plaintiff's claim is finally established therein, the Deputy Commissioner shall, subject to the provisions of section 12, divide the treasure between him and the finder.

(2) If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Deputy Commissioner shall deliver the treasure, subject to the provisions of section 16, to the finder.

If value of treasure exceeds one lakh, finder to get one lakh, the excess going to Government in specified cases.

16. If, in the case referred to in section 11 or in sub-section (2) of section 15, the amount or value of the treasure found exceeds one lakh of rupees, the Deputy Commissioner shall deliver so much of the treasure as is of the amount or value of one lakh of rupees to the finder and shall declare the excess to be at the disposal of Government.

Power to acquire the treasure on behalf of Government.

17. The Deputy Commissioner may, at any time after making a declaration under section 9 and before delivering or dividing the treasure as hereinbefore provided, declare, by writing under his hand, his intention to acquire on behalf of the Government the treasure or any specified portion thereof by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons, and thereupon such treasure or portion shall be deemed to be the property of Government and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Decision of Deputy Commissioner final and no suit to lie against him for acts done *bona fide*.

18. No decision passed or act done by the Deputy Commissioner under this Regulation shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Deputy Commissioner to exercise powers of Civil Court.

19. A Deputy Commissioner making any enquiry under this Regulation may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits; and the provisions of Chapter VII of the Code of Civil Procedure shall, so far as may be, apply to proceedings under this Regulation.

Power to make rules.

20. The Government may, from time to time, make rules, consistent with this Regulation, to regulate proceedings hereunder and, generally, all matters not provided for herein. Such rules shall, on being published in the Official Gazette, have the force of law.

Penalties.

Penalty on finder failing to give notice, etc.

21. If the finder of any treasure fails to give the notice or does not either make the deposit or give the security required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure or the money in lieu thereof to which he would otherwise be entitled shall vest in the Government and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year or with fine or with both.

Penalty on owner abetting offence under section 21.

22. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 21, the share of such treasure or the money in lieu thereof to which he would otherwise be entitled shall vest in the Government, and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months or with fine or with both.

T. ANANDA ROW,
Dewan.

The Mysore Treasure-Trove Regulation.

Letter Pol. No. 296 of the 27th September 1910, from the Secretary to Government, General and Revenue Departments, to the First Assistant to the Hon'ble the Resident in Mysore.

Adverting to para 2 of your letter No. 2650, dated 29th April 1910, I am directed to forward a copy of the Bill to provide a law relating to Treasure-Trove in Mysore passed into law as Regulation III of 1910, together with 9 spare copies, and to request you to kindly forward a copy thereof to His Highness the Nizam's Government as usual. **Serial No. 5.**